

# OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

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## HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION

NOVEMBER 17, 2015

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# **OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION**

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**TUESDAY, NOVEMBER 17, 2015**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Present: Representatives Walden, Latta, Barton, Shimkus, Blackburn, Scalise, Lance, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Johnson, Long, Ellmers, Collins, Cramer, Upton (ex officio), Eshoo, Doyle, Welch, Yarmuth, Clarke, Loeb sack, Rush, DeGette, Butterfield, Matsui, McNerney, Lujan, and Pallone (ex officio).

Staff Present: Ray Baum, Senior Policy Advisor, Communications and Technology; Rebecca Card, Assistant Press Secretary; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Peter Kielty, Deputy General Counsel; Grace Koh, Counsel, Telecom; David Redl, Counsel, Telecom; Charlotte Savercool, Professional Staff, Communications and Technology; Gregory Watson, Legislation Clerk, Communications and Technology; Jean Woodrow, Director, Information Technology; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; David Goldman, Minority Chief Counsel, Communications and Technology; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Jerry Leverich, Minority Counsel; Lori Maarbjerg, Minority FCC Detailee; Tim Robinson, Minority Chief Counsel; and Ryan Skukowski, Minority Policy Analyst.

## **OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Mr. WALDEN. Good morning, everyone. And welcome to the subcommittee on Communications and Technology and our oversight hearing on the Federal Communications Commission.

I want to welcome the Chairman and all of the Commissioners. We are glad to have you here again. We appreciate your joining us today.

As you know, it is our job to not only initiate innovative legislation and work with all of you on various individual legislative and regulatory priorities, but it is also our job to conduct rigorous and appropriate oversight of the Federal Communications Commission. And that is the subject of the hearing that we have today.

Sadly, it is clear by various actions of this and previous commissions that Congress has delegated too much flexibility at times and authority to the FCC. And it seems that, regardless of what our clear legislative intent is, too often that clear intent gets misunderstood or, worse, obfuscated or obstructed. So, colleagues, we have to do a better job when we write these bills so as to limit FCC authority, not to expand it.

This committee has placed an emphasis on improving the FCC's processes when it comes to conducting the people's business. The full House has concurred with our work on multiple occasions, including as recently as last night, when the House passed the FCC Process Reform Act of 2015 unanimously. This effort arises from complaints and suggestions from the public and from various Commissioners over the years under various Chairs. Better process at the FCC will result in more transparent decisionmaking, where all the Commissioners have a meaningful opportunity to participate.

And, Chairman Wheeler, while you have made important improvements, and I commend you for that—you have reduced backlogs, you have implemented a new complaint process, among other items—members of your own Commission are driven to publicly express their frustrations with the bigger decisionmaking process at times, so it is distressing to hear of somewhat bitter divisions.

Now, let me give you three specific issues that concern me and many of us on the committee.

First, our lawyers believe the FCC has disregarded the clear directive in the STELA Reauthorization Act of 2014 by expanding the scope of the DSTAC Working Group beyond what was ever intended by the committee. So that is number one.

Number two, the FCC has promulgated rules designed to preempt state laws regarding municipal broadband absent congressional authority to do so.

And, of course, the FCC continues its 8-year-long failure to complete its required quadrennial review of media ownership rules. I wonder what penalties would befall a licensee of the Commission that so failed to follow the law.

And that is just the list of things that have already happened. The Commission has a number of pending proceedings that threaten to walk the same tired path of partisan, predetermined outcomes.

The Commission has announced a rulemaking to “clarify the FCC’s expanded privacy authority under the new Internet rules,” even when some cheerleaders for Title II common carrier regulation of the Internet access are coming to realize just how wide a net this self-granted authority casts over the Internet. If IP addresses are equivalent to phone numbers under Title II, just how will commerce flow in a broadband world? What is the FCC’s definition of “privacy” under a law designed for hand-cranked telephones?

The Commission appears poised to move forward on an item to redefine multichannel video programming distributor, or MVPD, to include linear over-the-top video providers. This is billed as a way to promote online video as a competitor to traditional cable and satellite providers, yet many over-the-top providers assert that gov-



ernment intervention is not warranted and that this will chill investment and innovation in the nascent, growing sector.

And the Commission appears ready to move forward to expand the scope of the universal service Lifeline program without adopting controls to prevent ballooning costs. While this Commission has taken some steps to reduce waste, fraud, and abuse—and I commend you for that—much work remains in these areas, and the program still lacks meaningful spending controls. This, despite the fact the contribution factor for universal service—that is the percentage of consumers’ bills the FCC collects each month to support the Universal Service Fund program—will rise to 18 percent in January, and that is an all-time high.

Serious concerns about the misguided management and reward system of the Enforcement Bureau have risen to the point that Chairman Upton, the vice chairman of this subcommittee, Mr. Latta, and I have asked the Government Accountability Office to conduct an independent investigation into how decisions are made, how fines are determined, and how employee performance is assessed.

In addition to these concerns, many stakeholders have expressed overarching concern that the FCC is adopting and applying its rules in an arbitrary fashion, singling out certain companies or industries for asymmetric regulation. This concern is buttressed, in their view, by so many 3-to-2 votes.

With the spectrum auction less than 4 months away, I would also like to get your assurance that the Federal Communications Commission will fully and faithfully implement the law that was passed by Congress that broadcasters will not be forced to participate and that the Commission will make all reasonable efforts to preserve broadcaster coverage, prevent interference, and make sure that consumers can continue to enjoy their over-the-air viewing.

Two final notes. First, congratulations to the FCC on your October 23 unanimous vote to adopt the AM radio revitalization order, providing needed relief to the struggling AM radio industry. To quote the NAB press release, “a great day for AM radio and for millions of listeners across America.” I especially commend Commissioner Pai for his leadership on this issue and for all of you for coming together and finally getting this done.

And I also want to congratulate Commissioners Rosenworcel and O’Rielly for their bipartisan efforts on 5G wireless. Keep it up.

There is no lack of leadership or ability among the five people sitting before us today. You are all accomplished, recognized leaders. Our job is to change the system so each of you is a full participant in these incredibly important and complex decisions in a rapidly changing communications world.

With that, I will turn to my friend from California, Ms. Eshoo, for her opening comments.

[The prepared statement of Mr. Walden follows:]

#### PREPARED STATEMENT OF HON. GREG WALDEN

As you know, it’s our job on this subcommittee to not only initiate innovative legislation and work with each of you on various legislative and policy proposals, but also to conduct rigorous and appropriate oversight of the FCC, as we will do today.

Sadly, it's clear by various actions of this and previous commissions, Congress has delegated too much flexibility and authority to the FCC. And it seems that regardless of what our clear legislative intent is, too often that clear intent is misunderstood, or worse, obfuscated or obstructed. So colleagues, we have to do a better job when we write these bills so as to limit FCC authority, not expand it.

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And Chairman Wheeler, while you have made important improvements—you've reduced backlogs, implemented a new complaint process among other items—members of your own commission are driven to publicly express their frustrations with the bigger, decision-making process. It's distressing to hear of the bitter divisions.

Now, let me give you three, specific issues that concern us:

- Our lawyers believe the FCC has disregarded the clear directive in the STELA Reauthorization Act of 2014 and expanded the scope of the DSTAC working group beyond what was ever intended;

- The FCC has promulgated rules designed to preempt state laws regarding municipal broadband absent congressional authority to do so;

- and, of course, the FCC continues its eight-year-long failure to complete its required quadrennial review of media ownership rules. (I wonder what penalties would befall a licensee of the commission that so failed to follow the law?)

And that's just the list of things that have already happened. The commission has a number of pending proceedings that threaten to walk the same tired path of partisan, predetermined outcomes:

- The commission has announced a rulemaking to "clarify the FCC's expanded privacy authority under the new Internet rules." Even some cheerleaders for Title II, common carrier regulation of Internet access are coming to realize just how wide a net this self-granted authority casts over the Internet. If IP addresses are equivalent to phone numbers under Title II, just how will commerce flow in a broadband world? What's the FCC's definition of "privacy" under a law designed for hand-cranked telephones?

- The commission appears poised to move forward on an item to redefine "multi-channel video programming distributor" or "MVPD" to include linear over the top video providers. This is billed as a way to promote online video as a competitor to traditional cable and satellite providers—yet, many over-the-top providers assert that government intervention is not warranted and that will chill investment and innovation in the nascent and growing sector.

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getting that done. And I want to also congratulate Commissioners Rosenworcel and O'Rielly for their bipartisan efforts on 5G wireless—keep it up.

There is no lack of leadership or ability among the five people sitting before us today. You are all accomplished, recognized leaders. Our job is to change the system so that each of you is a full participant in these incredibly important and complex decisions in the rapidly changing communications world.

**OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Ms. ESHOO. Thank you, Mr. Chairman.

And good morning, Mr. Chairman and members of the Commission. It is always great to see you here, the full Commission.

I want to start out by commending the Chairman and, certainly, the Commissioners. The Chairman began his job as the Chairman of the Commission 2 years ago this month. I don't know what the exact date was, Mr. Chairman, but I know it was 2 years ago. And it may seem to you like 100 years, some days anyway.

But in the staff memorandum, if members have read it, I just want to go through what I think is an honor roll of addressing issues. This is taking on a great deal, and I think they are all worthy of mention. Some of my colleagues are not going to agree, but, obviously, I think it is very important: net neutrality, spectrum legislation, public safety, AWS-3 auction, incentive auctions, the pending merger transactions, universal service, the E-rate, Lifeline, Rural Health Care Program, tech transition, consumer protection, public safety, enforcement, and I think there is—well, obviously, there has been work on process reform.

And when I name off all of these areas, imagine the work that is underneath one or two words. So, whether Commissioners have agreed or disagreed on parts of policies that come under those umbrellas, you have taken on a huge workload, and I salute you. I have served with either five or six chairmen and commissions, and I think that this is the most proactive commission and chairman that we have worked with. So thank you. I salute you.

More than a decade ago, the Columbia Business School professor Eli Noam examined the relationship between entrepreneurship and government and telecommunications. He concluded that entrepreneurial firms exist in the telecom sector—and this is so interesting to me—not despite of government but, rather, because of it.

So let's assess how. Competition has been foundational in the Communications Act for more than 80 years, eight decades. So we do get some things right around here. Actions such as the Carterfone decision, the breakup of AT&T, and the 1996 Telecom Act demonstrated that when incumbents fail to innovate that the public sector has to step up to protect consumers and promote competition.

But what should communications policy look like in the second decade of the 21st century? In the Internet age, it begins with open, interconnected networks that empower consumers and businesses to use the devices and the services of their choosing. Robust, enforceable open Internet rules prevent broadband providers from blocking or throttling lawful online content or engaging in paid prioritization.

It means reforming legacy video laws that hinder innovation and consumer choice while protecting incumbent interests. And it means ensuring that consumers can buy a set-top box from someone other than their pay-TV provider. The lack of competition in the set-top box space has left consumers paying, on average, what some people think is whopping: \$231 a year on rental fees alone. Why we allow this to continue I don't know, but it really does need to be addressed.

So, to promote competition, we also need commonsense policies that make it easier for new companies to enter the broadband market. And I want to thank Commissioner Rosenworcel for highlighting in her testimony today the "dig once" policy that the chairman of our subcommittee and myself launched and on a bipartisan basis have promoted to promote broadband and do it in a very smart way.

Finally, competition should be embedded in the decisions we make on spectrum. A balanced spectrum policy that recognizes the importance of both licensed and unlicensed spectrum is going to enhance competition, it will drive down prices, and it will unlock new innovation. It is an innovation platform in our country, and we can't lose sight of that.

So my special thanks to you, Mr. Chairman, for your superb leadership; to each Commissioner for your leadership, for your working together. Even when you disagree, it is not personal, it is about the policy. And we all benefit from a variety of views.

And more than anything else, I will be gone from this world, but what I want written about the 21st century is that it was an American century.

I have gone over my time. I apologize to Congresswoman Matsui. I was going to yield time to her, but perhaps somebody else will.

Thank you, Mr. Chairman.

And thank you——

[The prepared statement of Ms. Eshoo follows:]

#### PREPARED STATEMENT OF HON. ANNA G. ESHOO

More than a decade ago, Columbia Business School Professor Eli Noam examined the relationship between entrepreneurship and government in telecommunications. He concluded that entrepreneurial firms exist in the telecom sector not despite of government but rather because of it. Let's assess how.

Competition has been foundational in the Communications Act for more than 80 years. Actions such as the Carterfone decision, the breakup of AT&T and the 1996 Telecom Act demonstrated that when incumbents fail to innovate, the government has stepped in to protect consumers and promote competition. But what should competition policy look like in the second decade of the 21st century?

In the Internet age, it begins with open, interconnected networks that empower consumers and businesses to use the devices and services of their choosing. Robust, enforceable open Internet rules prevent broadband providers from blocking or throttling lawful online content or engaging in paid prioritization. It means reforming legacy video laws that hinder innovation and consumer choice, while protecting incumbent interests. And it means ensuring consumers can buy a set-top box from someone other than their pay-TV provider. The lack of competition in the set-top box space has left consumers paying on average a whopping \$231 per year on rental fees alone.

To promote competition, we also need commonsense policies that make it easier for new companies to enter the broadband market. A 'dig once' policy is one such example of how to reduce the barriers to broadband deployment, increase competition, and do so while saving taxpayer dollars. When new competition is unlikely to

emerge, such as in the \$40 billion a year special access market, the FCC must act decisively to reform the market and stop anti-competitive practices.

Finally, competition should be embedded in the decisions we make on spectrum. A balanced spectrum policy that recognizes the importance of both licensed and unlicensed spectrum will enhance competition, drive down prices and unlock new innovation.

My special thanks to Chairman Wheeler and fellow Commissioners for being here today. With your commitment to a competitive telecommunications agenda, the second decade of the 21st century can be the decade when entrepreneurs finally prevailed.

Mr. WALDEN. Thank you.

Ms. ESHOO [continuing]. Commissioners.

Mr. WALDEN. I will now turn to the chairman of the full committee, the gentleman from Michigan, Mr. Upton, for opening comments.

**OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. UPTON. Well, thank you, Mr. Chairman.

As we all know, 2 years ago, this committee welcomed a newly sworn-in Chairman Wheeler to this very hearing room. Our message then for the new Chair and the entire Commission was short and sweet: Given the FCC's jurisdiction over one of the most important sectors of our economy, the decisions that they would make would be critical to innovation, jobs, and our Nation's global leadership in technology.

And, today, our request is just as simple: In executing its functions, the agency must operate with openness and transparency for the benefit of American consumers and job creators.

Unfortunately, notwithstanding our clear and numerous concerns, the FCC has been plagued at times by process failures and a lack of healthy and honest policy debate. Ultimately, this has produced uncertainty in the market, harming our economy and the robust communication sector's ability to create the jobs that all Americans need.

There remains many significant matters to be decided by the Commission. These are opportunities for the FCC to get back on track, to demonstrate its commitment to process reform and return to the bipartisan policymaking that was once a hallmark of the FCC.

What you collectively do together matters to folks in Michigan and across the country, whose daily lives have been transformed by technology. And if the process can be improved, we will all be better for it.

I yield the balance of my time to Mrs. Blackburn and then Mr. Latta.

[The prepared statement of Mr. Upton follows:]

**PREPARED STATEMENT OF HON. FRED UPTON**

Two years ago, the Energy and Commerce Committee welcomed a newly sworn in Chairman Wheeler to this very hearing room. Our message then for the new Chairman and the entire commission was short and sweet: given the FCC's jurisdiction over one of the most important sectors of our economy—the decisions that they would make would be critical to innovation, jobs, and our nation's global leadership in technology. And today, our request is just as simple: in executing its functions,

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Mrs. BLACKBURN. Thank you, Mr. Chairman.

I want to say thank you to each of the Commissioners for taking your time to be here. It has been a while since we have had the full panel, and we are appreciative for this because we do have some questions. And FCC actions over the past several months have raised some questions about transparency and accountability and, as our chairman likes to say, regulatory humility or the lack thereof. So those are issues we want to cover with you today.

We also are going to want to talk some about net neutrality and the Commission's potential entry into the online privacy realm. That has been the jurisdiction of the FTC, so we are a bit concerned about that and about how your policies seem to go about pushing the concept of picking winners and losers, which is not your job. The marketplace should do that.

I am also going to have some questions about your decision to preempt state laws in Tennessee and North Carolina on the muni broadband issue. The chairman touched on this. You have a position there that even DOJ found that it could not support. So this is of concern to us.

We thank you for being here to answer the questions.

And I yield the balance of the time to Mr. Latta.

Mr. LATTA. Well, thank you very much. I appreciate the gentlelady for yielding.

And, Mr. Chairman, thanks for today's hearing.

And to the Commission, thanks very much for being with us today.

Over the past year, this subcommittee has devoted many hearings to oversight of the FCC. This attention has not been misplaced. The communications and technology industry is a very productive and dynamic sector of our economy. We cannot afford to overlook the significance of regulatory policies and how the FCC's decisions affect the success of this vibrant industry.

Without proper oversight, some actions emerging from the FCC, like the Downloadable Security Technical Advisory Committee proposals, can go unchecked and have negative impacts on a thriving industry. DSTAC, established by the FCC as directed by Congress, was formed to make recommendations on a software-based, downloadable security system for securing video content. However, the FCC allowed the DSTAC to focus on navigation interface issues, as well as downloadable security. This action goes against clear direction from Congress. As a result, the technical working group failed to achieve its intended purpose.

I look forward to hearing from the Commissioners today on this issue, Mr. Chairman. And I yield back the balance of my time.

Mr. WALDEN. The gentleman yields back the balance of the chairman's time.

And we will now go to the ranking member of the full committee, the gentleman from New Jersey, Mr. Pallone.

**OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Chairman, and I also want to thank our ranking member for holding this hearing.

And thank you to all the Commissioners for coming up to talk with us once again.

This is the fourth FCC oversight hearing we have had this year. I certainly appreciate the efforts the Republicans have put into overseeing the Commission. Oversight of all the agencies under our committee's jurisdiction is always a top priority for Democrats, and, still, I wish the committee had been as energetic this year about other problems the American people are grappling with, such as climate change, safe drinking water, or domestic violence in sports.

Nevertheless, today's hearing is at least timely. We just recently commemorated the third anniversary of when Hurricane Sandy ripped through the East Coast. The storm left people across my district stranded without communication, some of them for weeks. And so I have spent the past 3 years making sure that we are better prepared for the next time disaster strikes. Because unless we do more to control climate change, there will be a next time.

And that is why, yesterday, I introduced the SANDy Act to make sure people have better access to communications in an emergency. The bill recognizes the importance of phone service, TV, and radio during emergencies. I hope that the proposal in that bill, along with the efforts at the FCC to make networks more resilient, will mean that we never have a repeat of the communication failures from 3 years ago.

But as important as network resiliency is, the FCC role in helping consumers is much broader. So I would like to briefly mention my other priorities for the Commission.

First, online video. The future of communications is video, and the future of video is online and mobile. I thank the Commission for its ongoing work to understand this dynamic market, but I urge you to always remain focused on putting consumers first. Above all, the Commission's priority should be making sure consumers are the ones deciding what services and devices meet their needs.

Second is spectrum. To make sure consumers can access the content they choose wherever they choose on whatever device they choose, they need more spectrum. The FCC is doing its part to meet this demand through its record-breaking spectrum auction earlier this year and its first-of-its-kind incentive auction set for early next year. I hope that Congress can continue to do our part by building on our recent work in the budget deal. We must find new ways to free more spectrum. We have not done enough.

I know I have a couple other people here that want to use my time, but, before I yield, I wanted to thank Chairman Walden for

his willingness to revisit the matter of broadcast ownerships. The chairman called a hearing to explore this issue a few months ago but had to cut it short. And this is an issue that the American people care deeply about, so I appreciate the fact that the chairman has offered to complete the hearing on December 3, and I look forward to it.

So I thank, again, our witnesses. I look forward to hearing from you all about the important work the FCC is doing to help consumers.

I have 2 minutes. I would like to give 1 minute to Mr. Butterfield and 1 to Ms. Matsui. We will start with Mr. Butterfield.

Mr. BUTTERFIELD. I will do it very quickly, Mr. Pallone. Thank you very much for yielding.

And thank you, Mr. Chairman, for convening this important hearing today.

And to Commissioner Wheeler and to your colleagues, thank you so very much for coming.

I would like to very quickly mention one thing because I may not be able to get it out during the remainder of the hearing. This is very important to me, and it is important to members of the Congressional Black Caucus. I recall that when I was a judge, when I was lawyer, and now as a community-based Congressman, I have run into this problem constantly throughout the years, and that has to deal with telephone calls from prisoners. Even when I was a trial judge, I used to get collect calls from those who were incarcerated.

And you, Mr. Wheeler, and your Commission have addressed this issue, and I want to thank you and Ms. Clyburn and the others who worked so diligently on this.

A call that used to cost as much as \$14 per minute—a lot of people don't realize this—\$14 per minute now costs 11 cents per minute. A 15-minute phone call used to be up to \$210—a 15-minute call, \$210. Now it is \$1.65 per minute.

And I just want to commend you for your bold step in making that happen. I have a friend who is in prison. I visit him four times a year. And it is a big conversation among the population in the prison, how they have been relieved of these burdensome phone calls. And so I want to thank you for your work in that area.

And now I yield to my friend, Ms. Matsui.

Ms. MATSUI. Thank you very much for yielding to me.

Welcome back, Chairman Wheeler and Commissioners. We appreciate the work you are doing in many areas.

One of my top priorities is making more spectrum available. The recently passed Budget Act took important first steps, but I believe Congress and the FCC need to build upon these provisions to identify new spectrum opportunities.

We also share many other priorities, from modernizing the Lifeline program for broadband to keeping the incentive auction on track. I look forward to hearing more about the FCC's progress on promoting a competitive market for special access services.

I also urge the Commission to work with the subcommittee to ensure any products of the set-top box working group process serve the public interest.

Thank you, and I yield back.



Mr. WALDEN. The gentlelady yields back.

All time has expired.

We will now go to the Chairman of the Federal Communications Commission, the Honorable Mr. Wheeler, for your opening statement. It is good to see you.

And I just want to stipulate for the record, the red I am wearing has nothing to do with Ohio State.

Let's go now to Mr. Wheeler.

**STATEMENTS OF THE HON. TOM WHEELER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; THE HON. MIGNON CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HON. JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HON. AJIT PAI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND THE HON. MICHAEL O'RIELLY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

**STATEMENT OF THE HON. TOM WHEELER**

Mr. WHEELER. Mr. Chairman, it is a privilege to be here. Ms. Eshoo, Mr. Pallone.

The color facts speak for themselves, sir.

I have a prepared statement in the record, and I look forward to discussing a vast array of topics that have been suggested here today.

Let me begin by applauding this body and the House for the bipartisan passage of H.R. 2583. We understand the process reforms that you seek, and we will comply with the law.

Briefly today, let me focus on three topics that only Congress can resolve and pledge to work with this committee in addressing them.

As I have said every time that I have been here, we have a crisis in bringing public safety communications into the digital era. We all mourn the events in Paris and the tragedy that happened there, but it reminds us of the need for constant preparedness and vigilance.

When September 11 happened in this country, we discovered problems with the interoperability among our first responders, and Congress stepped up to address that. Mr. Pallone's new proposal that he just spoke about reminds us of the need to improve network resiliency in disasters.

And there is another lurking problem, and that is the difficulty of our 6,800 public safety answering points, our 911 operators, and the difficulty they are having adopting the next generation, the digital generation, of 911 capabilities. They risk becoming analog islands in a digital sea. The current systems are costly to operate and with limited capabilities compared to digital. The transition is expensive. It requires new equipment and new systems. It requires running redundant analog and digital during the conversion.

There needs to be a national solution, national coordination, and national help to find the funds, perhaps from future auctions. It is worthy of public hearings, I would urge, Mr. Chairman, to illuminate the issue and the potential solutions, and we would look forward to working with the committee in that regard.

Secondly, this committee has taken really important steps on infrastructure construction, and more opportunities await. There are really three goals. When you look at infrastructure, there are really three goals. How do you provide for clarity, consistency, and completion—the three C’s of infrastructure.

Insofar as clarity is concerned, today, court decisions decide infrastructure policy. Congress should decide infrastructure policy. You know, we need policy on activities that are deemed normally not to have significant impact on the environment. We need to eliminate the need for permits on technology upgrades without negative effects. We need to have the presumption that one commercial approval works for others; you don’t have to have repetitive approvals. And we need to address the challenge in the Clean Water Act that says that when you dig up a street to replace the sewer you are prohibited by law from laying fiber. It just doesn’t make any sense. Talk about “dig once.”

Insofar as consistency, only Congress can streamline the siting of facilities on Federal lands. There are just too many agencies with too many diverse processes to do serially.

And on the question of completion, there needs to be certainty in the decisions. The reality is that appeals from the shot clock—we establish a shot clock, and then it goes to court in appeals, and it just delays the process further. One example of a solution was recently passed in the State of California, where the California law says that if a decision is not made within the shot clock it is deemed granted.

So clarity, consistency, and completion are the goals we need to focus on for infrastructure, and we looked forward to working with you on those.

And, finally, I know that this committee is concerned about pirate radio. During my tenure, we have taken 280 enforcement actions against pirate radio. That is in the last 2 years. Commissioner O’Rielly has been a real leader in keeping us focused on this. We are working with the NAB on a joint task force on pirate radio.

But we need more tools. We are playing Whack-a-Mole right now. Every time a station pops up, we whack it. We need to have consequences for those who facilitate those stations popping up, the landlords who look the other way because helping pirates is risk-free. Congress could make it illegal to aid or abet pirate radio operations, and, in the process, denying them the opportunity to operate in this way would be a significant means of thwarting the continued growth of pirate radio.

On these and all other issues, we look forward to working with this committee. And I thank you for the opportunity to be here.

[The prepared statement of Mr. Wheeler follows:]

**Statement of FCC Chairman Tom Wheeler**

**Before the  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
U.S. House of Representatives**

**Hearing on  
“Oversight of the Federal Communications Commission”  
November 17, 2015**

Introduction

Thank you, Chairman Walden, Ranking Member Eshoo, and members of this Subcommittee, for the opportunity to appear before you this morning to discuss the Commission’s important work helping American consumers and promoting the U.S. innovation economy.

I am grateful to be joined by my four colleagues on the Commission. Each offers a unique perspective that strengthens the Commission’s policymaking. Commissioner Clyburn’s drive and leadership were key to the Commission’s recent adoption of our second Inmate Calling Services Order. I’ve also enjoyed traveling with her this fall to talk with local leaders about expanding telehealth in Florida and closing the digital divide in Michigan. Commissioner Rosenworcel understands that broadband service needs to reach homes, not just schools, for our children to thrive and is championing our efforts to close America’s homework gap. Commissioner Pai has been touring rural America to help identify ways the Commission can remove barriers to broadband deployment. And Commissioner O’Reilly is leading the charge as we modernize USF for rate-of-return carriers, and he continues to be a vital partner in our efforts to improve the agency’s operations.

I’m pleased to report that the information and communications technology sector continues to thrive and drive economic growth and improvements in the lives of the American people. The virtuous cycle is working: the trend of robust investment and innovation in the Internet sector continues; broadband providers are upgrading and building out their network infrastructure, engaging in M&A and increasing speeds to their end-user customers; venture capital is flowing to Internet companies; edge providers are investing and creating new and innovative services; and consumers are reaping the benefits.

I’m also proud of the Commission’s efforts to ensure the U.S. has world-leading networks that are fast, fair, and open. We’ve adopted common-sense rules of the road to preserve an open Internet. Our merger reviews have preserved competition in the wired and wireless marketplaces and will spur a 40 percent increase in the entire nation’s residential fiber build. We’ve removed barriers to competitive broadband investment and upheld the rights of communities to decide their broadband future. Our E-rate modernization efforts have already connected millions of additional students to Wi-Fi high-speed Internet. And we’ve conducted a spectrum auction that enabled the commercial use of 65 megahertz of spectrum, while raising more than \$41 billion for Congressional objectives.

The Commission continues to pursue an aggressive agenda to build on this progress and maximize the network benefits for the American people. I'd like to highlight a few of our top priorities, as well as take a moment to talk about important issues affecting the Commission's operations.

#### FCC Activities

##### *Spectrum*

Unleashing spectrum to spur innovation and consumer benefits remains a top priority for the Commission. We not only need to make more spectrum available for broadband, but we also need to use spectrum more efficiently and remove barriers to wireless deployment. I welcome the mandate to identify new available spectrum in the recently passed Bipartisan Budget Act. And I am encouraged that both the House and Senate are focused on facilitating infrastructure deployment and have held a number of hearings to discuss ideas and review specific proposals. This is a bipartisan priority for the Commission and on Capitol Hill. The FCC staff has a tremendous amount of experience with wireless facility deployment and stands ready to serve as a technical resource to you and your colleagues.

We are moving forward on a number of key spectrum initiatives. Last month, we launched our Spectrum Frontiers proceeding, which proposes to authorize 3,850 megahertz of spectrum for mobile services. That is six times as much licensed commercial spectrum as ever proposed in any previous Commission proceeding. We also propose to double the amount of high-band unlicensed spectrum to 20 times as much as all unlicensed Wi-Fi spectrum in lower bands.

As you're aware, our most immediate focus is on the Incentive Auction, which will repurpose more beachfront spectrum to meet growing consumer demand. We are on track to begin the auction on March 29, 2016. Reverse auction applications are due on January 12, 2015, and forward auction applications are due on February 9, 2016. With the rules and policies necessary to conduct the auction finalized, staff is now concentrating on bidder education. Over the next several months, the staff will continue its bidder education efforts, which will include a series of webinars, tutorials, and mock auctions. We will also be releasing file format information for the forward auction that will enable potential participants to prepare for the auction. Finally, I'm happy to report that, over the summer, the Commission concluded frequency coordination arrangements with both Canada and Mexico and established the foundation for the harmonized use of the 600 MHz Band in North America.

##### *Broadband Deployment and Adoption*

As always, making sure all Americans have access to affordable, high-speed broadband is a key goal. I recently traveled to Montana to learn first-hand about the progress being made in connecting unserved communities and also the challenges that remain. We have a lot of work left to do to ensure that rural schools, libraries, and small businesses are not left behind in a broadband gap as we move further into the 21<sup>st</sup> century.

I am encouraged that both sides of the aisle have put a number of ideas on the table to streamline and expedite broadband deployment. I look at broadband deployment policies through a "Three C" lens: clarity, consistency, and completion. In other words, are we making rules and establishing processes that are clear and easy to follow? Are we removing overlapping

requirements and streamlining where possible? And are we imposing timelines or shot clocks for completion?

FCC programs are having a meaningful impact in bringing broadband to rural America. Recent Connect America Fund support is leveraging private investment that will deliver broadband to 7.3 million rural Americans. But we have more work to do.

There have been various proposals for reforms for rate-of-return carrier universal service support to provide support for standalone broadband and to create a voluntary path to model-based support. A few months ago, I spoke to the NTCA Fall Conference in Boston and discussed the four corners of a plan for rate-of-return reform: a voluntary path to a cost-model-based support mechanism; a new mechanism for all loop costs that will supersede HCLS and ICLS over time; a transition period to phase in this new plan in a timely but reasonable manner; and a program budget and other measures to improve the efficiency and effectiveness of the program. My office is working closely with Commissioners Clyburn and O'Rielly, FCC staff, and key stakeholders to implement reforms based on these principles. Rural Americans deserve no less.

In 2015, if you aren't online, you can't participate fully in our democracy and economy. The Commission is committed to digital inclusion efforts. That's why we are also moving forward with efforts to fundamentally modernize Lifeline and restructure the program to support 21st century communications and to properly align stakeholder incentives to prevent waste, fraud, and abuse in the program.

#### *Public Safety*

You all know that I am passionate about 911 modernization, and it is my hope that we can work together and devote more attention to this issue, which can be a matter of life or death for your constituents. In 1999, Congress established 911 as the nationwide emergency number and called for a 911 system that would use the best technology available to deliver emergency assistance. Despite many life-saving advances in public safety, the promise of the law is not being realized 16 years later. Only Congress can solve the problem.

The Nation's 911 system is at increased risk due to retirement of aging communications infrastructure and public safety's inability to keep pace with investment in new technology. The solution is accelerated deployment of NG911. The FCC is doing what it can to facilitate NG911 transition, but state and local authorities need more assistance. Targeted near-term Congressional action would help state and local authorities achieve nationwide deployment more quickly and uniformly, thereby reducing risks and long-term costs. I hope to continue to engage with members of the Committee on this critically important matter.

#### *Consumer Protection*

In addition to public safety, one of the core values that we expect of our networks is consumer protection. I am proud of our Enforcement Bureau's work to put U.S. consumers first. The Bureau's priorities are protecting consumers, safeguarding competition, securing networks, and policing the integrity of the Commission's funds, programs, and services. In short, the Bureau's job is to hold companies accountable for their behavior and ensure they are following Commission rules. That's not overly aggressive; that's basic consumer protection. Whether it's

preventing cramming, improving Wi-Fi access in hotels, or protecting consumer data, the Commission will not hesitate to act to protect consumers' interests.

#### FCC Operations

##### *Process Reform*

I share this Committee's commitment to improving how the FCC does business. That's why from the day I walked in the door, I have made it a priority to reform the FCC's processes to make the agency more efficient and transparent. In February of last year, a Commission staff working group issued a process reform report. FCC staff have been actively working on implementing that report's recommendations and have made significant progress. Last spring, I asked my fellow Commissioners to designate a senior representative to participate in a Task Force that would focus on internal procedures relating to the Commissioners' decision-making process. The Task Force has been considering topics in response to Commissioner O'Rielly's concerns in his blogs and other statements, as well as topics raised by other Commissioners. Our reforms are making tangible, impactful progress that will improve our decision-making process. Working together with my fellow Commissioners, Congress, and other stakeholders, I know that we can make further improvements to the agency's operations.

##### *Appropriations*

While I recognize that appropriations are outside of this Committee's jurisdiction, I want to emphasize to you all that the proposed cuts to the Commission's FY2016 budget would have severe consequences to the agency's ability to protect public safety, advance the spectrum agenda, and transact business vital to the U.S. economy and consumers in a timely fashion. For example, budget cuts will mean that the nation's only federal network monitoring system, the Network Outage Reporting System (NORS) will continue to be vulnerable, as will the Disaster Reporting System (DIRS) that is essential to local public safety in times of emergency. At a time when networks are being mysteriously cut, we need reliable outage reporting. Similarly, when the next natural disaster strikes, it will be too late if the disaster preparedness information is not available. While the proposed appropriation has funds for conducting the spectrum auctions, it would not cover the costs of development -- such as identifying spectrum for auction, dealing with incumbent users, and making technical preparations -- a cross-bureau effort that is time-intensive, complex and requires staff with expertise and experience that is not fungible. Finally, the proposed cuts would also result in a degradation of overall IT infrastructure performance -- such as server uptime, security levels, and user desktop (VDI) capacity -- that could inevitably impact auctions and non-auctions activities alike.

The FCC is at the lowest number of FTEs in modern history. Further reductions in staff and IT spending are inevitable with the proposed cuts to an agency where 70 percent of expenses are personnel-related, and over 90 percent are non-discretionary, including items such as rent. The FCC is a licensing agency, and without people and IT improvements, licensing will inevitably slow down, which will have a negative effect on economic innovation and companies' ability to meet consumer needs.

#### Conclusion

Thank you for this opportunity to testify about the FCC's recent activities and upcoming agenda. I look forward to working with you to find common ground and am happy to answer any questions you have about our efforts, successes, and future endeavors.

Mr. WALDEN. Mr. Chairman, thank you for those recommendations and suggestions. Thanks for being here. We look forward to the questions.

We will now go to the Honorable Ms. Clyburn, Commissioner of the Federal Communications Commission.

Thanks for your good work on the issues raised by Mr. Butterfield. And we look forward to your testimony.

#### **STATEMENT OF THE HON. MIGNON CLYBURN**

Ms. CLYBURN. Thank you, Chairman Walden, Ranking Member Eshoo, distinguished members of the committee. I appreciate the opportunity to appear before you this morning in the company of my colleagues.

We are living during an incredibly exciting time. America remains the land of opportunity. Technological advancements abound, providing new means to achieve the American Dream. And broadband is one of the biggest enablers of that dream. It is breaking down barriers to health care through remote monitoring, it is offering new paths to jobs and training, and it is providing our children with world-class learning.

Most Americans enjoy ubiquitous access to broadband, but the number of those who do not remains high. I am both humbled and grateful that, from the directive issued by you, that the FCC has the obligation, ability, and opportunity to serve our Nation by acting to close chronic opportunity divides.

My written testimony, which I ask to be included in the record, focuses on a promise and opportunities made possible by universal access to broadband, and it outlines our efforts to close those remaining communications access gaps.

The Mobility Fund. While many of us enjoy nearly ubiquitous mobile coverage, pockets of our Nation remain in darkness. In 2001, a bipartisan FCC adopted a dedicated Mobility Fund, but it has yet to be implemented. I believe that it is imperative that we move quickly to adopt a permanent Mobility Fund to eliminate coverage gaps across our Nation.

Lifeline. The statute accords equal weight to rural high-cost areas and low-income consumers when it comes to ensuring access to service reasonably comparable to those we enjoy in urban areas, and it is time that the FCC do so, as well. It is time to move from merely criticizing to fixing remaining problems in Lifeline.

So I fully support the modernization of the program to address the affordability divide. And I believe that the steps we have already taken and the plan we have outlined in our notice of proposed rulemaking would not only eliminate incentives for waste, fraud, and abuse but enable Lifeline to become truly a real communications bridge to help Americans in need to get back on their feet.

The incentive auction. The Commission has worked hard to implement your directives regarding the incentive auction. And I am proud that we adopted rules to incentivize smaller companies to deploy wireless networks in areas that lack advanced services.

And, as you have heard, the reform of inmate calling services. I am deeply grateful that we finally acted, in the absence of a functional marketplace, to provide affordable communication services



for those wanting and needing to stay in touch with the currently incarcerated. Too many families, friends, and attorneys are making unconscionable choices to stay in touch. And our Nation is plagued by the highest recidivism rate in the world in part because families cannot afford to maintain regular contact and too many former inmates go home as strangers and are unable to readjust.

Our Connect to Health program. That task force is an effort to reach beyond the Beltway to focus on game-changing projects and stimulating new collaborations between public and private stakeholders and local communities that are seeking to solve health challenges through broadband-enabled solutions.

And, lastly, we talked about it, the AM revitalization item. This bipartisan compromise addressed and met the needs of small businesses, AM radio owners, and the public by taking steps to increase the viability of AM radio stations through access to an FM translator.

Mr. Chairman, this sums up my testimony. The rest is in the record. And I look forward to any questions you may have.

[The prepared statement of Ms. Clyburn follows:]

**Testimony of Mignon L. Clyburn, Commissioner  
Federal Communications Commission  
Before the  
U.S. House of Representatives  
Committee on Energy &  
Commerce Subcommittee on Communications & Technology  
Oversight of the Federal Communications Commission  
November 17, 2015**

Chairman Walden, Ranking Member Eshoo, distinguished Members of the Committee, thank you for the opportunity to appear before you today in the company of my colleagues from the Federal Communications Commission.

We are living during an incredibly exciting time. America remains the land of opportunity. Technological advancements abound, providing new means to achieve the American dream. Broadband is one of the biggest enablers of that dream. It is breaking down barriers for healthcare through remote monitoring; offering new paths to jobs and training; and providing a growing number of our children with access to world-class learning. Most Americans enjoy ubiquitous access to broadband, but the number of those who do not remains high. I am both humbled and grateful that, from the directive issued by you, the FCC has the obligation, ability and opportunity to serve our Nation by acting to close these remaining opportunity divides.

Mobile broadband is deeply intertwined in our daily lives. We talk, text, check the weather, map out destinations and avoid traffic, order food or transportation, and monitor our health and tasks at home via handheld devices. Honestly, I stress more about forgetting my smartphone than my wallet and I am not alone. Pew Research Center released a report a few

weeks ago showing that smartphone ownership has increased from 35 percent in 2011 to 68 percent today, and the 86 percent of young adults owning a smart phone today is up from 52 percent just four short years ago. But let us not miss the other side of the story: approximately half of consumers living in rural areas, and the same number who earn less than \$30,000 a year, own a smartphone.

What makes our nation unique and incredible, however, is our commitment to ensure everyone has access to the infrastructure and utilities that impact our daily lives: electricity, water, highways, telephone and now broadband. I am proud to have been a part of the FCC's historic decision to reform the universal service fund and adopt a blueprint to provide all American households with broadband access. While we have had tremendous success implementing the reforms to deploy fixed broadband – over six million American households will be connected with fixed broadband pursuant to our Connect America Fund and another 2.7 million will receive support to preserve and maintain service – the FCC's work is not yet complete.

I believe the agency has the ability and obligation to close these opportunity divides and can do so by adopting a permanent mobility fund to ensure all areas have access to mobile broadband, and by modernizing our Lifeline program to ensure that, once deployed, access is affordable.

**Mobility Fund.** It is no secret that I advocated for the creation of the Mobility Fund in 2011 and fought for sufficient funding to put our nation on a path to universal mobile service. While I believe it was appropriate to seek further comment on refining the Mobility Fund in April of 2014 in light the tremendous deployment during the intervening time, this proceeding was not an invitation for inaction and our job is not done.

I applaud the tremendous amount of private sector deployment of LTE, but the truth is that pockets of our nation still lack service and there are areas that only have service due to universal service support. Like many of us, I have driven through areas of mobile darkness and when I needed connectivity the most, was painfully reminded that the purpose of the universal service fund is to close the divides in areas where the private sector alone is unable or unwilling to deploy. We need to fulfil this commitment for mobile just as we have for fixed services.

**Lifeline.** We must also remain mindful that universal access involves more than just deploying facilities. Section 254 puts equal weight on the requirement that reasonably comparable service be available to low-income consumers as it does to ensure that reasonably comparable service is available in rural and high cost areas. The time is now for the FCC to follow the directives of the statute and devote resources and a commitment to low-income consumers as it has to rural consumers.

Yes, we are well aware of the vulnerabilities of the past, but the FCC took decisive action in 2012 by addressing many of the long standing issues in the Lifeline program. To date, our reforms have saved the Fund over \$2.75 billion and we are not done.

We must move beyond simply criticizing the “old” Lifeline program and focus on ways in which a restructured, recalibrated, modernized program can serve those who qualify and strengthen our economy. My goal is to create a new, refocused and retargeted program that will serve those most in need, and maximize each dollar of universal service funding spent, while eliminating any remaining incentives for waste, fraud and abuse. If done correctly, for a mere \$9.25 per qualified household per month, our government can provide a communications bridge that will help millions to get their lives back on track. The 21<sup>st</sup> century communications framework that the rest of us take for granted could be a life-changing link to education,

employment, even access to better healthcare for those who cannot afford a monthly connection. I am pleased that, under the leadership of Chairman Wheeler, the FCC sought comment this summer on revamping the Lifeline program and I hope we move to Order expeditiously. Every day that Lifeline supports a 30-year-old, voice-only framework with limited service options is another day where opportunity divides deepen.

In addition to universal service, I would like to highlight three other areas where the FCC is addressing chronic opportunity divides: (1) our auction proceeding, (2) reforming of inmate calling rates, and (3) the Connect2Heath FCC initiative.

First, the FCC adopted smaller license blocks and geographic service areas for the AWS-3 and incentive auction proceedings and instituted rural bidding credits when we reformed our competitive bidding rules. These actions should incentivize smaller companies to deploy wireless networks in areas that currently lack advanced services.

Second, last month, the Commission, after over a decade of inaction, voted to bring relief to friends, families and lawyers seeking to maintain connections with a loved one or client behind prison walls. Families are making incredible sacrifices: forgoing food, medicine, clothing, even access to 21<sup>st</sup> century educational opportunities for their children. Advocates are stymied in their efforts to provide vigorous representation of their clients. Young people are going without computers, broadband and printers because family resources are going toward prison phone calls. One example of this is a teenager from New Mexico who told the story of her family's sacrifice to stay in touch with her incarcerated father: They have spent more than \$28,000 to date to have a mere five minute per week conversation. This parade of horrors is rooted in an egregiously failed market regime. But there is reason for optimism. Since the FCC established interim interstate rate caps in 2013, prison call volumes have increased nearly 70% in

some facilities: real evidence that high rates discourage connection. But the majority of the 700,000 inmates released each year return home as strangers because on average, only 38 percent are able to maintain contact on a regular basis. As a result, these individuals are more likely to be among the 75 percent of inmates that reoffend and return to prison within five years.

Numerous studies continue to show that staying in touch with those who are incarcerated not only reduces recidivism, but improves the attitude of inmates during their sentence. Our action last month, I believe, is key to the on-going bipartisan efforts to reform our criminal justice system, such as the recently introduced Sentencing Reform Act of 2015. We all have a role in making society better and with this Order, I am proud to say, that the FCC has done its part.

Third, nowhere is the power of broadband more essential than in helping our country meet its national health goals. Over the last year, the Connect2HealthFCC Task Force has been laser-focused on this broadband-health equation. We have engaged a broad cross-section of federal, state and local stakeholders representing rural and underserved areas with the goal of understanding local broadband health ecosystems, and tapping into the unique challenges and solutions that communities are developing across the nation. Allow me to list a few highlights:

- In Virginia, broadband is bringing world class -prenatal care to rural areas of the Commonwealth where expectant mothers would otherwise have no access to high-risk obstetricians. This program reportedly reduced the number of pre-term deliveries by 25 percent, shortened the length of NICU stays (by nearly 40 percent), and had broader economic impacts – lowering the costs of care by millions of dollars and allowing mothers to return to work earlier after delivery.

- In rural Mississippi, the University of Mississippi Medical Center and the state's leadership structured a public-private partnership to bring mobile broadband to parts of the Delta where one in every ten people has diabetes and 40% of the children are obese. This groundbreaking program is using broadband-connected devices to help 100 uncontrolled diabetics engage in their own care. These patients, whose primary access to care may have been emergency room centers, reported zero ER admissions during the course of the program.

- In Florida, health care kiosks – enabled by broadband -- bring primary care to remote and underserved parts of our country, meeting the needs of children, seniors and people with disabilities where they live. A fire chief from Satellite Beach, Florida is using remote monitoring systems in the firehouse to cut 9-1-1 calls from elderly residents in half.

I am energized by the inspiring work of our local communities and committed to answering their call for robust and ubiquitous connectivity. We must ensure that our regulatory frameworks keep pace, and we will continue to work aggressively toward this end.

Finally, I want to thank my colleagues, and the Members of this Committee, for your support in finalizing a set of real solutions to the challenges faced by AM radio operators. As you may know, during my tenure as Acting Chair, I called for the opening of a translator window to increase the service options and economic viability of these stations. Just last month, through a bipartisan vote to open an immediate window for broadcasters to move an existing translator up to 250 miles, we will dramatically increase the quantity and competitive pricing of translators in the marketplace. Furthermore, upon the conclusion of the broadcast incentive auction, we have committed to opening an auction window for AM broadcasters to obtain a translator. We have also taken steps to provide increased protections for our smallest businesses in the space, by giving Class C and D stations a separate window during each stage of our process. Through

compromise and collaboration, we will yield powerful results for this valuable sector of our telecommunications marketplace.

Thank you for allowing me once again to appear before you and I welcome any questions you may have.



Mr. WALDEN. Commissioner, thank you for your good work, and thanks for sharing those items with us.

We will now go to Commissioner Rosenworcel.

Thank you for being here. We look forward to your testimony, as well.

#### **STATEMENT OF THE HON. JESSICA ROSENWORCEL**

Ms. ROSENWORCEL. Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. Thank you for the opportunity to appear before you today along with my colleagues at the FCC.

Today, communications technologies account for one-sixth of our economy, and that is no wonder, because these are the networks that carry all aspects of modern, commercial, and civic life. They are changing at a breathtaking pace, requiring us all to think boldly about the future. And, in the months ahead, the FCC will do just that as we begin the world's first spectrum incentive auction, work to speed the IP transition, and update universal service and media policies. This is lofty stuff.

But I want to begin today by talking about the least glamorous part of the communications revolution. I want to talk about infrastructure. Because no amount of new fiberoptic facilities or spectrum matters without good policies on the ground.

I believe it is time to take a comprehensive look at deployment practices and find a way to make them more consistent all across the country. We can begin with "dig once" policies, which can pave the way for more broadband deployment.

And the notion behind "dig once" is simple. When construction crews are building or repairing roads, deploying broadband conduit at the same time adds only 1 percent to the cost of highway projects. But this small change can have big impact, yielding more broadband investment, more universal access, and more competition.

We should also focus on Federal lands, which make up as much as one-third of our national real estate. We can expedite deployment here by creating an open data inventory of Federal infrastructure assets that can help support broadband and wireless deployment.

We also need standard contracts from the GSA to facilitate deployment of antenna structures on Federal property. And, while we are at it, we should consider extending FCC's shot-clock policies for State and local jurisdictions to Federal authorities so those who want to deploy infrastructure get a timely response.

Not all of these policies can be acted on by the Commission alone, but I believe it is essential that we work with you and our Federal colleagues to help put them in place.

Now, these gritty realities of network deployment may not get the glory, but they are important. Of course, it is also important that we focus on what we can do with our new networks. So now I want to talk about how our networks are used for learning.

When I was growing up, homework required just a paper, pencil, and my brother leaving me alone. That is no longer true, because today 7 in 10 teachers assign homework that requires access to

broadband. But FCC data suggests as many as one in three households do not subscribe to broadband service.

Now, if you think about those numbers, where they overlap is what I call the homework gap. And if you are a student in a household without broadband, now just getting your homework done is hard. Applying for a scholarship is challenging. And while some students may have access to a smartphone, let me submit to you that a phone is just not how you want to research and type a paper, apply for jobs, or further your education.

These students enter the job market with a serious handicap. And that is a job market today where half of all jobs require some level of digital skills. By the end the decade, that number jumps to 77 percent. But the loss here, ultimately, is more than individual, because it is a loss to our collective human capital and shared economic future that we need to address.

Now, to address it is going to require a mix of public and private initiatives, modernizing FCC work to support connectivity in low-income households, more WiFi, more competition, and better infrastructure. But I think the sooner we act, the sooner we bridge the homework gap and give more students a fair shot at 21st-century success.

Now, learning, of course, is just one example of how new communications technologies are remaking our world. There are others. Just last week, we had a cruel reminder from abroad that when the unthinkable occurs our security so often depends on connectivity. And in the days and weeks ahead, I know our horror will not fade, but our resilience will only grow. And at home and abroad, we need to study the mix of public alerts, first-responder communications, and social networking that facilitated safety. Those lessons can make us stronger, and we should submit ourselves to the discipline of learning them.

Thank you. I look forward to answering any questions.

[The prepared statement of Ms. Rosenworcel follows:]

**STATEMENT OF COMMISSIONER JESSICA ROSENWORCEL  
FEDERAL COMMUNICATIONS COMMISSION  
BEFORE THE  
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY  
ENERGY AND COMMERCE COMMITTEE  
UNITED STATES HOUSE OF REPRESENTATIVES  
“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION”  
NOVEMBER 17, 2015**

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. Thank you for the opportunity to appear before you along with my colleagues at the Federal Communications Commission.

Today, communications technologies account for one-sixth of the economy. No wonder. These are the networks that carry all aspects of modern commercial and civic life. They are changing at a breathtaking pace, requiring us to think boldly about the future. In the months ahead the agency will do just that as we begin the world’s first spectrum incentive auctions, work to speed the IP transition, and update universal service and media policies.

This is lofty stuff. But I want to begin today by talking about the least glamorous part of the communications revolution. I want to talk about infrastructure. Because no amount of new fiber optic facilities or spectrum matters without good policies on the ground.

We need to take a comprehensive look at deployment practices and find a way to make them more consistent across the country. We can begin with Dig Once policies—which can pave the way for more broadband deployment. The notion behind Dig Once is simple. When construction crews are building or repairing roads, deploying broadband conduit at the same time

adds only 1% to the cost of highway projects. But this small change can have big impact—yielding more broadband investment, more universal access, and more competition.

We should also focus on federal lands—which make up as much as one-third of our national real estate. We can expedite deployment here by creating an open data inventory of federal infrastructure assets that can help support broadband and wireless deployment. We also need standard contracts from the General Services Administration to facilitate deployment of antenna structures on federal property. While we're at it, let's consider extending FCC shot clock policies for state and local jurisdictions to federal authorities so those who want to deploy infrastructure get a timely response.

Not all of these policies can be enacted by the agency alone, but I believe it is essential that we work with you and our federal colleagues to help put them in place.

Now these gritty realities of network deployment may not get the glory, but they are important. Of course, it is also important that we focus on what we can do with our new networks.

Let me begin with how networks are used for learning.

When I was growing up, homework required just a paper, pencil, and my brother leaving me alone. No more. Because today, roughly seven in ten teachers assign homework that

requires access to broadband. But FCC data suggest that as many as one in three households do not subscribe to broadband service.

Think about those numbers. Where they overlap is what I call the Homework Gap. If you are a student in a household without broadband, just getting homework done is hard. Applying for a scholarship is challenging. While some students may have access to a smartphone, let me submit to you that a phone is just not how you want to research and type a paper, apply for jobs, or further your education.

These students enter the job market with a serious handicap. That's a market today where half of all jobs require digital skills. By the end of the decade that number jumps to 77 percent. But the loss here is more than individual. It's a loss to our collective human capital and shared economic future that we need to address.

This will require a mix of public and private sector efforts, modernizing FCC work to support connectivity in low-income households, more Wi-Fi, more competition—and better infrastructure. But I think the sooner we act, the sooner we bridge the Homework Gap and give more students a fair shot at 21<sup>st</sup> century success.

Learning, of course, is just one example of how new communications technologies are remaking our world. There are others. Just last week we had a cruel reminder that when the unthinkable occurs our security so often depends on connectivity. In the days and weeks ahead I know our horror will not fade and our resilience will only grow. At home and abroad we will

need to study the mix of public alerts, first responder communications, and social networking that facilitated safety. Those lessons can make us stronger and we should submit ourselves to the discipline of learning them.

Thank you. I look forward to answering your questions.

Mr. WALDEN. Thank you, Commissioner.

I will now turn to Commissioner Pai for your opening comments. Thanks for being with us. We look forward to your testimony.

#### STATEMENT OF THE HON. AJIT PAI

Mr. PAI. Thank you, sir.

Chairman Walden, Ranking Member Eshoo, members of the subcommittee, thank you for inviting me to testify today. Since 2012, it has been a pleasure to labor alongside you on these issues of critical importance, and I look forward to continuing that work in the time to come.

This morning, I would like to share my perspective on three important issues on which members of this subcommittee have recently focused, and I will start with broadband deployment.

Before shovels even hit the dirt, Internet service providers must navigate a dizzying array of Federal, state, and local obstacles, and this comes at a cost. Every week spent negotiating with a municipality for access to local rights of way is another week that consumers must wait for a faster service. Every dollar spent complying with outdated regulations is a dollar that could have been spent delivering digital opportunities. I have heard and seen this for myself, everywhere from Fargo, North Dakota, to Hammond, Louisiana.

I applaud the work of this subcommittee on breaking down the barriers to broadband infrastructure deployment. On a bipartisan basis, you have examined six bills that could boost broadband deployment, including the Broadband Conduit Deployment Act of 2015. This bill would help ensure that fiber accompanies every new highway and, thereby, improve broadband across America. This kind of work in the weeds is exactly what is needed if we are going to spur private-sector investment.

Unfortunately, in my view, the FCC has not been as focused in promoting the digital revolution. The decision to regulate Internet service providers, like Ma Bell of yore, is a case in point, but that is not the only problematic decision. The FCC has also impeded the IP transition, making it harder for carriers to leave behind the fading copper networks of yesterday and focus on building next-generation networks.

It is time for the Commission to change course. We should recognize that competition is the best guarantor of consumer welfare, certainly more than pervasive regulation. We should embrace the IP transition and clear out the regulatory underbrush that has slowed down the rollout of new services. And we should work with this subcommittee on further breaking down the barriers to infrastructure investment.

Speaking of changing course, I hope the Commission will soon abandon its quest to regulate the over-the-top video market. So far, we have left this market to evolve on its own, and that has been a wise approach, in my opinion. As the Digital Media Association, which represents over-the-top providers including Apple, Microsoft, and Sony, put it, "The tremendous developments in over-the-top services have emerged in an environment that permits innovators to be flexible and unencumbered." And so the Commission's proposal, as they put it, "could end up backfiring, reducing resources

and opportunities for these innovators rather than expanding them.”

And, last month, Ranking Member Pallone called on the FCC to hit the “pause” button on regulating streaming video because consumers are beginning to have more programs to choose from, more ways to get them, and more options on prices. I wholeheartedly agree. And I think that the FCC should embrace the paradigm he expressed this morning of putting consumers first.

One last concern I raise for the subcommittee’s consideration is the agency’s enforcement process. I applaud the leaders of this subcommittee for asking the GAO last month to investigate the management of the FCC’s Enforcement Bureau.

To be blunt, the FCC’s enforcement process has gone off the rails. The FCC routinely asserts that companies have violated never-adopted rules, ignores facts that get in the way of good press, and plucks forfeiture amounts out of thin air.

Things weren’t always this way. Under Chairman Genachowski’s leadership, I only dissented on one enforcement action, and that was because I thought the proposed forfeiture amount was too low. Under Acting Chairwoman Clyburn’s leadership, I didn’t dissent on any Enforcement Bureau actions, not one. But in the last 13 months, I have voted against 10. To be clear, I haven’t changed my approach. It is the Commission’s approach that has changed.

One further problem is that Commissioners themselves can’t oversee the enforcement process. On June 24, I asked the Enforcement Bureau to provide me with a list of their open investigations. One day before our last oversight hearing, the Chairman’s office told me they believed they were a week or two away from supplying this information. Five months later, my office has followed up on this request no less than 12 separate times, and I still haven’t received a list of open investigations.

This is unacceptable. As someone nominated by the President and accountable to this body and to the American public for making FCC policy, I should be able to find out what the FCC, including its bureaus, is doing. That I can’t indicates that the agency’s process is broken.

Chairman Walden, Ranking Member Eshoo, members of the subcommittee, thank you once again for holding this hearing. I appreciate your concern about areas of interest to the FCC and look forward to working with you once again in the time to come.

[The prepared statement of Mr. Pai follows:]



**TESTIMONY OF COMMISSIONER AJIT PAI,  
FEDERAL COMMUNICATIONS COMMISSION**

**BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY  
OF THE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE**

**“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION”**

**NOVEMBER 17, 2015**

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you for giving me the opportunity to testify this morning. Over the last three and a half years, it has been an honor to work with the Members of this Subcommittee on a wide variety of issues, from streamlining the permitting process for small cells and other wireless infrastructure to improving the availability of 911 at hotels, universities, and office buildings, from speeding the deployment of broadband to rural America to freeing up new, high-band spectrum for unlicensed use. I look forward to continuing that work.

This morning, I'd like to share my perspective on three important issues on which Members of this Subcommittee have recently focused.

**Broadband Investment.**—The Internet isn't an abstraction. It's a physical network of networks that requires massive investment to deploy and constant adjustment to manage. Telephone companies, cable operators, wireless providers, and others have invested more than \$1.4 trillion over the last 18 years to trench conduit, lay fiber, erect towers, install equipment, and build out those networks that connect us all.

Before shovels even hit the dirt, Internet service providers must navigate a dizzying array of federal, state, and municipal obstacles. This comes at a cost: Every week spent negotiating with a municipality for access to local rights of way is another week that consumers must wait for faster service and another week that work crews must sit idle. Every dollar spent complying with outdated regulations is a dollar that could have been better spent deploying next-generation technologies.

Let me give an example I encountered last week. Southern Light is a competitive fiber builder all along the Gulf Coast, with plant stretching from Jacksonville, Florida to the bayous of Louisiana. They use boring rigs to burrow through hundreds of feet of mud to install conduit. They push high-pressure air to snake cables through that conduit. And they use fiber optic technology as backhaul, to connect wireless small cells to the network. But in many cities, Southern Light is stuck, waiting. That's because some municipalities take months to grant a local franchise. Others have imposed moratoriums on the construction of new small cells. Regulatory hurdles like these slow down deployment and sometimes deter Southern Light from building in an area altogether.

If we want faster broadband, if we want lower prices, and if we want more competition, we need to remove barriers to infrastructure investment and technological innovation. That's been my priority since I got to the FCC.

I applaud the work of the Subcommittee on this front. Just last month, you held a hearing on breaking down barriers to broadband infrastructure deployment. In particular, you examined six bills that could boost deployment. You discussed broadening access to poles and conduits for Internet service providers, streamlining the historic review process for broadband facilities, developing common forms for siting wireless facilities, and tracking the application process for building broadband on federal lands. And you discussed the Broadband Conduit Deployment Act of 2015, which could turn every new highway into a road toward more fiber and better broadband in a community.

These might not be headline-grabbing topics—but they should be. And that’s because this work in the weeds is exactly what’s needed if we’re going to spur private sector investment.

Unfortunately, the Federal Communications Commission has not been as focused on promoting the digital revolution. The decision to regulate Internet service providers like Ma Bell of yore is a case in point. But that’s not the only problematic decision. The FCC has also impeded the IP Transition, making it harder for carriers to leave behind the copper networks of yesterday and focus on building next-generation networks. Last year, the Commission gave itself the authority to micromanage broadband networks, requiring carriers to seek permission before discontinuing almost every network feature no matter how little used or old fashioned. This summer, the Commission decided to slow copper retirement and let our staff flyspeck every change a carrier makes to its business model in the name of enhancing competition in the already competitive *voice* market. And it looks like we’re headed in the same direction with the special access market: Even though we haven’t analyzed the troves of marketplace data we’ve collected, the Commission has already singled out four carriers for re-regulation. That will divert even more capital away from next-generation networks and back toward 1.5 Mbps special access services that are 17 times slower than the FCC’s definition of broadband.

And then there are the decisions that the Commission has simply refused to make. Under Chairman Genachowski, we unanimously sought public input on eliminating the legacy regulations contained in the 1980s-era *Computer Inquiry* proceedings. But so far, there has been no follow through. Last year, we unanimously proposed to streamline our accounting rules, which require some carriers (but not others) to maintain 148 accounts and subaccounts designed for TDM-based telephone service. But again, no follow through. And as Commissioner O’Rielly blogged about last week, we are sitting on a petition to recognize what should be obvious: The traditional incumbents no more dominate today’s residential market than the cellphone companies, cable operators, and over-the-top VoIP providers they compete with, and should not be regulated as if they did.

These regulatory roadblocks are bad for consumers, bad for infrastructure investment, and bad for our nation’s economic competitiveness. After all, networks don’t have to be built. Risks don’t have to be taken. Capital doesn’t have to be invested. When the FCC makes it less attractive for companies to connect the American people, those companies will find other places to put their money.

And that’s exactly what has happened. Capital expenditures by major wireline broadband providers plunged 12% in the first half of 2015 compared to the first half of 2014. The decline among all major providers was 8%. This decrease represents billions of dollars in lost investment and tens of thousands of lost jobs. And it is quite atypical. Only twice before have broadband service providers’ capital expenditures fallen on a year-over-year basis: following the dot.com bust in 2001 and the Great Recession in 2008.

Where has this money gone? One major broadband provider that cut back on capital investments by 29% in the first half of 2015 announced this summer that it would be spending an additional \$3 billion to build out its network—in Mexico. Another major broadband provider spent \$4.4 billion earlier this year to buy a content provider, AOL.

It is time for the Commission to change course. We should recognize that competition is a much better guarantor of consumer welfare than pervasive regulation. We should embrace the IP Transition and clear out the regulatory underbrush that has slowed down the rollout of new services. And we should work with this Subcommittee to further our shared goal of breaking down the barriers to infrastructure investment.

**Over-the-Top Video.**—Speaking of changing course, I hope the Commission will soon abandon its quest to regulate the over-the-top video market.

So far, U.S. regulators have largely left Internet-based video alone. We don’t regulate the content that over-the-top providers offer. We don’t regulate prices. And we don’t regulate business models. We

leave those decisions to the market—to the aggregated choices of millions of Internet-savvy consumers. And that, in my view, has been a tremendously wise approach.

Almost every day, there seems to be another market-driven, over-the-top offering that benefits online providers, content creators, and most importantly, consumers. Just look at how diverse the marketplace is. Do you want a bundle similar to what cable and satellite companies offer? Try PlayStation Vue, which carries over 80 networks such as FOX, TBS, and Comedy Central, and will soon include ESPN, ABC, and The Disney Channel. Or YipTV, which offers Spanish speakers more than 50 networks for about \$15 a month. Want a premium channel on your iPad? HBO and Showtime now offer stand-alone apps. Prefer your movies or television shows *à la carte*? Check out iTunes, Google Play, and M-GO. Okay with ads? Check out Crackle, which lets consumers watch over-the-top content—like Jerry Seinfeld’s *Comedians in Cars Getting Coffee*—for free. If you’re willing to spend a bit of money, there’s always Netflix and Amazon Instant Video, where you can binge watch an entire season of “Master of None” or “Transparent” while your children sleep. And don’t forget user-generated platforms like YouTube, which add over 300 hours of new content every minute.

It’s the free market that’s incentivized all this competition. The Digital Media Association, which represents over-the-top providers including Apple, Microsoft, and Sony, put it well: “Excessive or ill-advised regulation at this point could deter continued investment. The tremendous developments in [over-the-top] services have emerged in an environment that permits innovators to be flexible and unencumbered. . . . [T]he addition of regulation could alter the foundation that has supported these developments and that has encouraged investment for continued growth.” As a result, the Commission’s proposal “could [] end up back-firing, reducing resources and opportunities for these innovators rather than expanding them.” Obviously, this would be bad for consumers.

Last month, Ranking Member Pallone called on the FCC “to hit the pause button on regulating streaming video.” I wholeheartedly agree with him. He pointed out that he has “not been hearing from constituents so far that they can’t find the shows they want.” Nor have I. Rather, he said that “consumers are beginning to have more programs to choose from, more ways to get them, and more options on prices.”

For me, both as a regulator and an online video consumer, the way forward is simple. There is no market failure. There is no problem to be solved. Therefore, there is no need for the U.S. government to impose regulations on over-the-top video designed for markets and technologies as they existed over 20 years ago.

**Enforcement Process.**—One last concern I raise for the Subcommittee’s consideration is the agency’s enforcement process. Chairman Upton, Subcommittee Chairman Walden, and Subcommittee Vice Chairman Latta wrote the Comptroller General last month to request an investigation into the management of the Commission’s largest subdivision, the Enforcement Bureau. They were right to do so.

To be blunt, the FCC’s enforcement process has gone off the rails. Instead of dispensing justice by applying the law to the facts, the Commission has focused on issuing headline-grabbing fines, regardless of the legality of its actions.

Things did not use to be that way. Under Chairman Genachowski’s leadership, I only dissented on one Enforcement Bureau action. That was a partial dissent based on my belief that the forfeiture proposed by the Commission was too low. Under Acting Chairwoman Clyburn’s leadership, I did not dissent on any Enforcement Bureau actions—not one. But in the last thirteen months, I have voted against ten such items.

To be clear, I haven’t changed my approach to enforcement. It’s pretty simple: we establish rules in advance; we analyze all facts relevant to an allegation; we determine liability; we fix a penalty. But the agency’s enforcement approach has changed dramatically.

Consider the \$100 million fine the FCC issued against AT&T this summer for allegedly failing to disclose that unlimited-data-plan customers could have their data speeds reduced temporarily as part of the company's approach to managing network congestion. In that case, AT&T posted disclosures on its website and at the point of sale. It publicized its program through the national press. It disclosed the program to every single unlimited-data-plan customer. And it sent targeted disclosures to every single customer actually affected by the program. All of this fit the FCC's previous interpretation of its transparency rule to a T. And AT&T had implemented its program after the FCC had explicitly approved similar programs on at least three separate occasions as innovative ways to manage network congestion. But these facts and precedents did not matter—all because they got in the way of a \$100 million headline.

Or consider the \$30 million in fines the FCC recently issued to six prepaid calling card providers. Although the companies' conduct was shameful, the agency's authority to impose forfeitures was fatally compromised by its own inadequate and incomplete investigation—one that failed, among other things, to specifically identify even a single purchase of a prepaid calling card, as required by the Communications Act.

Sadly, these cases are not even the most egregious violations of due process. A fundamental tenet of the American legal system is that the government cannot sanction you for violating the law unless it has told you what the law is. In the regulatory context, that means that rules must exist before the FCC can enforce them.

But TerraCom didn't break the FCC's rules. Last year, the FCC proposed to fine that company \$10 million for failing to protect personally identifiable information (also known as PII) and failing to notify certain customers of a PII data breach. The problem? The Commission had never interpreted the Communications Act to require the protection of PII. The Commission had never obligated carriers to notify consumers of a data breach of PII. The Commission had never adopted rules regarding the misappropriation, breach, or unlawful disclosure of PII. Indeed, the Commission could not point to a single rule that TerraCom had violated.

And M.C. Dean didn't violate any FCC rules either. Earlier this month, the agency accused the company of using an unlicensed Part 15 device to intentionally disrupt the operation of another. But the Commission had never interpreted the Communications Act to prohibit this. And our own rules expressly *allow* that conduct. They hold that, by definition, a Part 15 device cannot cause harmful interference to another Part 15 device. The litigation mess to come didn't have to be. In my view, the FCC *should* have rules that prohibit Wi-Fi blocking, but we don't. And it's not for the lack of any opportunity. Over a year ago, parties asked the Commission to adopt regulations on Wi-Fi blocking, and a broad cross-section of stakeholders urged the FCC to clarify the rules of the road. But instead, Commission leadership made it clear that no such guidance would be provided and the agency ultimately dismissed the petition.

One more problem traces through the Commission's recent enforcement actions: The penalties prescribed regularly appear to be plucked from thin air. The FCC offered no basis for fining AT&T \$100 million, only asserting that applying the statutory maximum would lead to an "astronomical figure." In TerraCom's case, the Commission calculated the base penalty to be \$9 billion—with a *b*—but decided without further explanation that \$10 million was sufficient. With such an implausibly large range of forfeitures, the agency has arrogated for itself the roles of judge, jury, and executioner. For what company can risk exposure to virtually limitless liability?

Congress never intended the FCC to assert that a company has violated never-adopted rules, to ignore facts that get in the way of good press, or to calculate potential forfeitures so implausibly large that any rough justice penalty will do.

When Congress adopted the Administrative Procedure Act, it laid out clear guideposts for how agencies should carry out their statutory duties. We are supposed to provide fair notice to parties of what the law requires. Next, we are supposed to investigate conduct, taking into account all of the evidence.

And third, we calculate forfeitures based on discrete and concrete violations of the law. The FCC faithfully followed that formula for the first 80 years of its existence. There's no good reason why it's become such a problem of late.

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Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you once again for holding this hearing and inviting me to testify. I look forward to answering your questions, listening to your views, and continuing to work with you and your staff in the days ahead.

Mr. WALDEN. Thank you, Commissioner Pai. That is very disturbing. We will follow up on that.

Mr. O'Rielly, we are delighted to have you before the committee. Commissioner, please go ahead with your opening comments.

#### **STATEMENT OF THE HON. MICHAEL O'RIELLY**

Mr. O'RIELLY. Thank you, Mr. Chairman. Thank you for the honor to be before this subcommittee to help further its oversight responsibility over the Federal Communications Commission.

During my 2-year tenure, I have tried to be true to my principles, look for areas of agreement with my colleagues, and move past any disagreements that we may have. This subcommittee is right to focus significant attention on the Commission, given how our decisions impact the American economy. In retrospect, I wish I had pushed for more FCC hearings when I advised committee members years ago.

With your indulgence, I would like to touch on four areas to help further the discussion.

First, a key priority for me is expanding the amount of commercial spectrum available and updating infrastructure rules to facilitate build-out. While the Spectrum Pipeline Act is a step in the right direction, industry experts indicate that 350 megahertz of licensed spectrum will be needed to meet projected demand by the end of the decade. Inevitably, Federal Government users must reduce their footprint. And we need to incentivize this transition, including instituting Federal Government spectrum user fees.

The Commission's efforts to release more spectrum for commercial use include the upcoming broadcast incentive auction, a proceeding targeting specific bands above 24 gigahertz, and examining the best ways to open the 5.9-gigahertz band for unlicensed use.

But no matter how much new spectrum is available, substantial infrastructure upgrades are needed. And I have discussed a number of ways to promote build-out in my written testimony.

Second, the Commission recently moved to reduce barriers to private-sector, not government, foreign investment by proposing to extend the common carrier streamlined review process to broadcast licensees. This action is not just about increasing capital for domestic broadcasters but also about expanding the ability of U.S. firms to invest internationally.

At the same time, fixing the process at the Commission will do nothing to alleviate the problems inherent in the opaque and lengthy Team Telecom review process. I respectfully request this body to consider ways to work across committee jurisdiction to craft an oversight function for Team Telecom that is grounded in fact and legitimacy rather than the whims of any Federal department at any given moment.

Third, I repeat my call for some badly needed process reforms at the Commission. Top of this list is allowing those interested in Commission open meeting items to see the exact text being proposed to engage in a clear and level playing field, not through a dense fog of spin.

Other reform ideas I have advocated were summarily deferred to a process review task force. My office has been actively engaged in

this process, but suffice it to say that no action has occurred yet. The committee's legislation in this area is both helpful and needed.

Lastly, the subcommittee should be concerned about the potential for Commission mission creep. Nearly every week, the Commission expansively interprets the Communications Act to claim broad authority outside that originally contemplated by the law. Without proper constraints, it is easy to see this or a future Commission trying to micromanage business practices of edge providers or on-line companies.

The Commission's strong interest in regulating privacy and data security is a troubling example with major implications for the tech economy and those businesses that transact with customers online. The Commission should not freelance in an area where it has little expertise. The communications sector is much too important to the economy to be saddled with experimental regulations from any and all interested agencies.

So, with that, I thank the chairman and wish to yield back.

[The prepared statement of Mr. O'Rielly follows:]

Statement of Michael O’Rielly, FCC Commissioner  
 Before the Subcommittee on Communications and Technology  
 House Energy and Commerce Committee  
 “Oversight of the Federal Communications Commission”  
 November 17, 2015

Thank you for the honor to be before this Subcommittee to help further its oversight responsibility over the Federal Communications Commission. I’d like to thank the Chairman, the Ranking Member, and all the members of this Subcommittee for the opportunity to engage with you today on any questions or concerns you may have. Since I was last here before you, a lot has happened at the Commission, with a number of bipartisan successes while some things have regrettably stayed the same. My colleagues have highlighted many different elements of the Commission’s work this year. I’d like to add a few more thoughts on where we have been and some areas where I think we can make some more progress.

**Wireless Spectrum and Infrastructure**

One of my main areas of focus this year has been in wireless communications, which as you know is experiencing an era of tremendous growth. To foster innovation, relieve network congestion and provide capacity for next generation products, new spectrum and infrastructure will be equally necessary.

From the Commission’s AWS-3 auction to our work on the 3.5 and 5 GHz Bands, we are actively releasing spectrum into the commercial marketplace. And, if all of the pieces are able to fit together properly, the broadcast incentive auction can achieve the desired outcome: release a considerable portion of 600 MHz spectrum for commercial services via auction and expand unlicensed spectrum opportunities, while allowing non-participating broadcasters to stay on air and continue to serve their communities. Although I was disappointed, and in some instances disagreed, in the direction taken regarding a number of components, including market variation, impairments, and reserve licenses, I remain hopeful that the auction ultimately will be a success, whenever it is held. Having worked to help draft the statutory provisions, it is a little self-serving, but appropriate, to commend Congress for such a strong and effective law.

Separately, this Subcommittee has recognized that the United States must push forward – and not rest on our laurels – to create a robust spectrum pipeline. Your substantial bipartisan work on the Spectrum Pipeline Act, included in the recent budget agreement, would open up 30 megahertz of spectrum for commercial use, which would be a big step in the right direction. But according to industry experts, 350 megahertz of licensed spectrum will be needed to keep up with the projected demand by the end of the decade. Inevitably, Federal government users are going to need to reduce their footprint to make this happen, and we need to be thinking about how to incentivize the transition. I have suggested that federal government spectrum user fees should be considered to promote maximum spectrum efficiency, and this can be initiated by this Committee by requiring NTIA to charge Federal spectrum users market rates for spectrum management functions.

The Commission recently moved forward on a notice targeting specific bands above 24 GHz, but more needs to be done to expand our efforts to include additional millimeter wave frequencies. I recently returned from the World Radio Conference where spectrum to facilitate future 5G networks



was one of the main topics of conversation. A measure of thanks is appropriate to Chairman Wheeler for committing to my proposal to examine more bands for potential next-generation deployments by early next summer.

The Commission is also examining the best ways to open the 5.9 GHz Band for unlicensed use, which can be done while protecting automobile safety systems planned for the same frequencies. I greatly appreciate the Subcommittee's efforts to bring all the stakeholders together to work out the logistics. By way of an update, the Commission is initiating testing to facilitate the necessary sharing parameters, while seeking to ensure that any use of this spectrum band by the automobile industry be for safety purposes only.

No matter how much new spectrum is added into the marketplace, the latest innovations and offerings will still not be available to Americans without substantial infrastructure upgrades. As this Subcommittee has recognized, more needs to be done overall to facilitate and accelerate broadband network deployment, and many of the proposals you have put forward would be extremely useful.

A little over a year ago, the Commission took steps in its *Infrastructure Order* to facilitate and reduce obstacles to infrastructure siting. The item excluded from environmental and historic preservation review, certain collocations on buildings and non-tower structures that already host antennas. This exclusion must be expanded to include small cell and DAS equipment that is being installed on any structure, including those with no pre-existing antennas. A particular focus of mine is ensuring the process is completed in the agreed upon timeframe of 18 to 24 months.

Further, the Commission must finish its review and address the problem of "twilight towers." These towers – constructed between March 2001 and March 2005 – were not specifically required to go through historic preservation review process. I know that Commission staff, industry and other stakeholders have been working together to resolve this issue, but it is quite harmful to have more than 4000 underutilized towers remain in regulatory limbo. Providers must be able to collocate on these structures as soon as possible.

The Commission should also work with other federal agencies to promote infrastructure siting on federal lands. This is an issue I spent a great deal of time on in my past, so I understand its importance. Regrettably, the Commission doesn't have a great role when it comes to federal lands, but it is encouraging that this Subcommittee is considering action to address the topic.

#### Foreign Ownership

The Commission recently moved to reduce barriers to foreign investment in the U.S. communications marketplace, by proposing to extend the streamlined review process already used for common carriers to broadcast licensees. Our procedures for reviewing possible foreign ownership in the broadcast context often require factual showings about investors' nationalities that are difficult or impossible for applicants to make. With many of our international allies permitting much higher levels of foreign investment in their communications companies, we should do whatever we can to multiply potential options for our own broadcasters.

However, fixing the process at the Commission will do nothing to alleviate the problems currently inherent in the opaque, often interminable, "Team Telecom" review process for these transactions. The critical national security analysis provided by Team Telecom can and should occur within a reasonable, timely, and transparent process that is fair to the parties involved, with no potential

of transactions falling into a black hole of uncertainty. Chairman Wheeler and the International Bureau have been working with Team Telecom to spur some improvements, which would be a welcome development. But the only way to accomplish the reforms needed may very well be for Congress to formally establish Team Telecom's structure, role, and process, as it did for CFIUS in the Foreign Investment and National Security Act of 2007.

#### **Process Reform**

My efforts to inspire some badly-needed process reforms at the Commission have unfortunately not been fulfilled yet, but this is a crucially important topic that cannot be stressed enough. As I discussed in great detail during my last appearance before this Subcommittee, the Commission has a major transparency problem starting first and foremost with the fact that we routinely adopt items that the public does not get to see and fully understand until days or even weeks after the final vote. Everyone who is interested in something the Commission plans to consider at an Open Meeting should be able to see for themselves exactly what is being contemplated so they can fully engage in the process on a clear and level playing field, not through a dense fog of spin. That this is in any way, shape, or form a controversial statement continues to amaze me. It is my hope that as time moves us further away from the high profile decision of last spring, the blatant unfairness of the current process will be recognized and finally addressed. This is not how we should be doing business.

Other reform ideas I have advocated for, such as posting adopted final rules within 24 hours of an open meeting, standardizing a 48-hour notice rule for items decided under delegated authority, assessing the role of FCC Advisory Committees, establishing a process to terminate dormant proceedings, and many others were summarily deferred en bloc to a Process Review Task Force created during this Subcommittee's oversight hearing in March. My office has been actively engaged in the task force's review process, but suffice it to say for now that no conclusions or actions have been forthcoming.

#### **Mission Creep**

I have raised concerns in the past about the potential for mission creep inherent in expansive interpretations of Communications Act used to claim broad authority that could easily encompass activities and parties far beyond the Commission's traditional jurisdiction. I fear that recent moves to proactively investigate and issue warnings to non-carriers on their terms of service are merely the leading edge of things to come as the full implications of several key decisions are finally revealed. From the principles underlying the Paypal, Lyft, and First National Bank enforcement actions, to the regulation of provider advertisements, it is easy to envision a scenario where the FCC would undertake an even broader examination of the business practices of edge providers or online businesses as potentially harmful to the so-called "virtuous cycle" in some unforeseen way.

The Commission's strong interest in regulating privacy and data security practices is another troubling development for anyone who is interested in the tech economy, or indeed, anyone who is interested in any business that transacts with its customers online. As I have pointed out before, our activities on this front run the risk of supplanting or conflicting with well-established FTC privacy and security precedents that are currently serving fairly well as a predictable road map for businesses and consumers alike. Congress has not assigned this role to the FCC, and we should not be taking it upon ourselves to freelance in an area where we have precious little experience or expertise. The Internet is

much too important to our economy to be saddled with experimental regulations from any and all interested agencies.

**Conclusion**

I appreciate your attention and hope my thoughts and perspective have been helpful. I look forward to answering your questions today and am happy to make myself available at any time in the future to discuss any of these issues in greater detail.

Mr. WALDEN. Commissioner O’Rielly, thank you.

And thanks to all the Commissioners and the Chairman for being here and for your comments.

I am going to start.

Commissioner Rosenworcel, I noted in your recent testimony in the Senate that you supported cost-benefit analysis in the FCC’s decisionmaking, reflecting what the President has proposed in his 2011 Executive order. Is that correct?

Ms. ROSENWORCEL. Thank you for the question, Chairman Walden.

I did acknowledge that the President issued an Executive order in July of 2011——

Mr. WALDEN. Right.

Ms. ROSENWORCEL [continuing]. Directing agencies to the extent possible to follow cost-benefit analysis, yes.

Mr. WALDEN. And you support that?

Ms. ROSENWORCEL. I can support an Executive order, yes.

Mr. WALDEN. Some I do; some I don’t.

Commissioner Pai, do you support that concept, as well, the cost-benefit analysis in the FCC’s decisionmaking, reflecting the President’s order of 2011 for the other agencies?

Mr. PAI. I do wholeheartedly, Mr. Chairman.

Mr. WALDEN. Mr. O’Rielly?

Mr. O’RIELLY. Absolutely, Mr. Chairman.

Mr. WALDEN. Commissioner Clyburn?

Ms. CLYBURN. I support the concept.

Mr. WALDEN. So, Commissioner Wheeler, it looks——

Mr. WHEELER. Oh, my goodness.

Mr. WALDEN [continuing]. Like you have three to two here right now, or three to one. Is this something we can look forward to you maybe circulating?

Mr. WHEELER. Well, I think the first thing that I clearly don’t need to remind this committee——

Mr. WALDEN. You are an independent agency not subject to the——

Mr. WHEELER [continuing]. That we are——

Mr. WALDEN [continuing]. President’s Executive order.

Mr. WHEELER [continuing]. Independent——

Mr. WALDEN. That is why you can show leadership and——

Mr. WHEELER. You knew it.

Mr. WALDEN. Yes.

Mr. WHEELER. And it is hard not to believe in cost-benefit analysis.

Mr. WALDEN. OK.

Mr. WHEELER. And the purpose of rulemakings is to conduct that kind of cost-benefit analysis and to discover, through the advocacy process, what are the costs——

Mr. WALDEN. All right, but——

Mr. WHEELER [continuing]. And what are the benefits and make a decision on it.

Mr. WALDEN. As you know this process, I only have 5 minutes, so I am going to cut to the chase here.

Is that something you are willing to put out for the Commission to consider in a formal basis, that you will do cost-benefit analyses?

Mr. WHEELER. So, Mr. Chairman, I have not specifically looked at the Executive order you referenced. Let me take a look at it, and I will be happy to get a response to you.

Mr. WALDEN. All right. I will make sure and get it to you.

This issue that Commissioner Pai raised is obviously disturbing to the committee. And he details how this has not been an issue in the past, now contends it is an issue. He has been trying to get access to what the Enforcement Bureau is looking at.

If I were on the Commission, I would feel that responsibility and feel like I had the authority to get that. What is the issue there, Chairman?

Mr. WHEELER. Thank you, Mr. Chairman.

I think that the issue here is the difference between a law enforcement activity and a policy deliberation. And in the law enforcement side of things, you are dealing with sensitive information, you are dealing with information that can move markets, you are dealing with a presumption of innocence, that somebody's name gets dragged through the press—

Mr. WALDEN. Well, but I guess if—

Mr. WHEELER [continuing]. But let me—

Mr. WALDEN. Because if prior Chairs have been willing to share that information, is there a specific—

Mr. WHEELER. It is not my understanding that that is the case, sir, that the law enforcement activities have always been—

Mr. WALDEN. But are all of these law enforcement, or are they just—

Mr. WHEELER. They are all law enforcement, yes, sir.

Mr. WALDEN. All right. Commissioner Pai seems to have a disagreement. I am going to try and sort this out.

Commissioner Pai?

Mr. PAI. Mr. Chairman, a couple of responses.

First, I think, fundamentally, every Commissioner has the responsibility to understand, because we are accountable for the policy decisions that any subordinate bureau makes.

Secondly, I have a security clearance comparable to any member of the Enforcement Bureau. I have been privy to some of the most sensitive government operations there are, far more sensitive, for example, than deciding whether or not Lyft or Uber or somebody else should get a citation from the Enforcement Bureau.

Additionally, I think that it is a question of selective prosecution that has been raised. For example, on issues like the TCPA, our number-one source of complaints is for violations of the Do Not Call Registry. Yet, when we adopted the TCPA rules, we only had one Enforcement Bureau citation on the books. Why is that?

Pirate radio. Commissioner O'Rielly has long been beating the drum, yet it wasn't a priority till—

Mr. WALDEN. All right.

Mr. PAI [continuing]. Recently. I want to understand why that is.

Mr. WALDEN. Commissioner O'Rielly, have you had similar sort of problems?

Mr. O'RIELLY. I agree with my colleague on a number of fronts. And he raised these issues—I have raised them before publicly. I have a problem with a number of aspects of our Enforcement Bureau, both in the selective prosecution but also getting information.

For instance, we have been trying to work on pirate radio for a while. In July, we adopted an item. I have been pushing them to do the policy statement that all of us agreed to do. It wasn't until last week, when this hearing was announced, or 2 weeks ago, that we actually finally got some ideas out of the Enforcement Bureau in terms of how to address pirate radio.

So I am troubled by how irresponsible they are to the concerns that we have and the activities that we would like to see addressed. But then, also, on the prosecution side, deep problems in terms of some of the items that we have adopted against my wishes.

Mr. WALDEN. All right. My time for questions has expired. To be continued.

We turn now to the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman.

Thank you for all of your opening statements.

There is something that I failed to mention in my opening statement, and I think it is important enough to circle back. I was talking about new competition and when it is unlikely to emerge. An example is the \$40-billion-a-year special access market. The FCC, I believe, has to act decisively to reform the market and stop anti-competitive practices. So I know that you are working on it, but I want to underscore it, because this isn't something that is small.

I would also like to recognize Ambassador Verveer, who is in the audience.

And thank you for your extraordinary service to our country, Mr. Ambassador. Welcome. You enhance the hearing room with your presence. Thank you very much.

Mr. WALDEN. Here, here.

Ms. ESHOO. Now, some questions.

Commissioner O'Rielly, in March, you called for the Commission to proceed with setting rules and policies that affirmatively permit foreign ownership of broadcast licensees above the 25-percent cap. I know that the proposed rulemaking was unanimously adopted last month.

Can you just quickly state what you think will come out of that proposal?

Mr. O'RIELLY. Absolutely.

Ms. ESHOO. Because I think it is a very important one.

Mr. O'RIELLY. No, I think so, as well. And I agree. And I thank the good work of my colleagues, including the Chairman, who has been very cooperative on this issue.

We have worked to try and provide a clear path for foreign investment into U.S. broadcast properties from the private sector, not the government, not foreign governments. And, in doing so, we think we can increase the amount of capital available for broadcasters in terms of things that they may need to do. That is very important.

But it also, as I talked about in my testimony, it is also about allowing U.S. investors internationally. This has been a barrier that is pointed on in a number of—

Ms. ESHOO. It does raise capital.

Mr. O'RIELLY. Absolutely.

Ms. ESHOO. It raises capital. So thank you, and thank you for working on that.

Commissioner Rosenworcel, you need to know that the chairman leaned over and said, "What did you do to get so many Commissioners to talk about 'dig once'?" One of these days, it is going to pass the Congress. But thank you. And thank you to the Chairman and anyone else that—I think that Commissioner Clyburn also said something about it.

You suggested that legislative efforts to increase licensed spectrum for the licensed spectrum pipeline should also include unlicensed. Obviously, you know that I am a huge proponent of unlicensed spectrum. You have called this the WiFi dividend.

Now, in crafting legislation, how do we ensure that the enormous economic value of unlicensed is reflected in CBO's scoring?

I almost didn't ask you this, because you are not a CBO person, but you have been on the inside of the government. And this is a problem. Anyway, do you want to take a shot at it?

Ms. ROSENWORCEL. Thank you for the question, difficult though it is.

Everyone in this room has probably used unlicensed spectrum today.

Ms. ESHOO. Sure.

Ms. ROSENWORCEL. Maybe it has been WiFi, your garage-door opener, an RFID tag when you were at the store, or a baby monitor overnight. Everyone in this room has used it. It is a huge part of our daily lives, and it is a huge part of our economy, responsible for more than \$140 billion in economic activity annually.

Ms. ESHOO. Right.

Ms. ROSENWORCEL. So, when we talk about spectrum policy, we need to make sure we talk both about licensed and unlicensed. And when legislation moves through this committee, including a swath of unlicensed is a good thing for the wireless economy. It is what I have called the WiFi dividend.

The challenge, as you acknowledge, comes with the Congressional Budget Office, which reviews spectrum legislation and has a heavy bias towards spectrum that gets auctioned and sold through the FCC's auction process. It strikes me that that accounting is outdated because it doesn't account for the \$140 billion in economic activity every year that is dependent on unlicensed spectrum.

And so the idea behind a WiFi dividend is to continue to move unlicensed spectrum when licensed legislation comes about. And I think, if we do that, we can see the economy grow and the Internet of Things really flourish.

Ms. ESHOO. Yes, that is great. Thank you.

Mr. Chairman, our Senate colleagues have done a study and concluded that consumers pay an average of \$231 annually. I said that in my opening statement. What are we going to do about this?

I think that section 629 is pretty specific in terms of its intention to give consumers a choice in what device they want to use. Do you want to comment on this?

Mr. WHEELER. Well, thank you, Ms. Eshoo.

Just last week, we closed a comment period in which we were asking for responses to the DSTAC report that Mr. Latta had ref-

erenced, and I think we need to then decide what we do to go on from there.

You know, I was reading section 629 this morning in anticipation it might be a topic. And I note that it specifically says that the Congress is telling the FCC to “assure,” quote/unquote, the availability of competitive navigation devices.

So we are going to get the comments in. We had a really fulsome DSTAC process. It produced two separate reports. We put both of those out for comments. The comments closed last week. We will review them and decide what happens next.

Ms. ESHOO. My time has expired. I have more questions. I don’t know if we are going to do more than one round.

Mr. WALDEN. We will try to.

Ms. ESHOO. Thank you very much.

Mr. WALDEN. We will go now to Mrs. Blackburn next.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

Chairman Wheeler, I want to talk about the Downloadable Security Technical Advisory Committee report and the final report it issued on development of downloadable security systems that would facilitate the delivery of video programming over third-party services. And, as you can imagine and as we have talked many times, my content producers in Nashville have a lot of concern about this.

And one of the proposals would allow MVPD service to be disassembled into individual piece parts that any retail device manufacturer could selectively reassemble into a new configuration and a new service. And it is similar to the AllVid concept considered by the FCC in 2010. Disaggregating this MVPD content would also lead third parties to circumvent the consumer protections that are built into regulated MVPD service but not into AllVid.

So, with respect to AllVid, I am concerned by ideas that are being pushed right now by some individuals and groups that would allow third parties to use the content for their own service in ways that violate the licensing terms and without consent of the content creator.

And we have a TV marketplace that is producing more video content than ever, so why would the government support this kind of intervention and theft?

Mr. WHEELER. Thank you, Ms. Blackburn.

I think the first reality here is that AllVid was an idea from half a dozen years ago. The world has moved on substantially since then.

As I indicated to Ms. Eshoo, the goal of DSTAC was to address exactly the question that you raise. And there were strong opinions on both sides. And the conclusions, the comments on it have just been filed.

I can assure you that it is no one’s goal to thwart the security that protects the sanctity of copyrights and that we will review the record that has been developed accordingly.

Mrs. BLACKBURN. So we can be assured that you all are not going to diminish the right of these content creators to control their content, correct?

Mr. WHEELER. We have to protect copyright, madam.

Mrs. BLACKBURN. OK.



Let me move on. I watched some video statements made by Jonathan Chambers over at the North Carolina Rural Center's Rural Broadband Conference that was held back in September. And he did a presentation called "Build It Anyway." And he, in this, personally talked about how he personally secured \$100 million, which he referred to as a tiny amount of money, for a rural broadband experiment.

And I want to play that right now.

[Video shown.]

Mrs. BLACKBURN. OK. If we can come back to the questioning. Mr. Chairman, were you aware of this presentation and aware that he was discussing \$100 million as a tiny amount of money? Because I can assure you, to my constituents in Tennessee, it is not a tiny amount of money.

Mr. WHEELER. I am unaware, but you just gave me a new piece of information. I had not seen that video, nor had I heard a report of this presentation.

Mrs. BLACKBURN. Are you aware of this supposed experiment?

Mr. WHEELER. Yes. We all voted on that experiment. And the question is, are there alternative ways to get broadband delivery in rural areas? We have a crisis in terms of broadband in rural America—

Mrs. BLACKBURN. The private sector, I think, can probably—

Mr. WHEELER. The issue is we are currently subsidizing one group of people who build fiber. And so the question was, "should there be tests of others who also build fiber, such as electric co-ops, and whether they can provide service where it is not being provided?" That is what this test was about.

Mrs. BLACKBURN. But to the tune of \$100 million?

Mr. WHEELER. That is what the test is about. Yes, ma'am.

Mrs. BLACKBURN. You think that that is worth \$100 million?

Mr. WHEELER. There are huge areas—

Mrs. BLACKBURN. OK.

Mr. WHEELER [continuing]. Of our country that are not being served by broadband.

Mrs. BLACKBURN. Is this an example of regulatory humility with which you approach your job?

Mr. WHEELER. No, I think our responsibility, I hope, is to make sure that we are using funds to expand the reach of broadband and to do so creatively.

Mrs. BLACKBURN. Mr. Chairman, I have letters from both the Governor and the Lieutenant Governor of the State of Tennessee I would like to submit for the record about their concerns—

Mr. WALDEN. Without objection.

Mrs. BLACKBURN [continuing]. With overriding muni broadband. [The information appears at the conclusion of the hearing.]

Mrs. BLACKBURN. I yield back.

Mr. WALDEN. The gentlelady yields back.

I recognize the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman.

I mentioned earlier that, yesterday, I introduced the Securing Access to Networks in Disasters, or SANDy, Act. And the SANDy Act

is a result of an examination of what went wrong during Hurricane Sandy 3 years ago and incorporates some lessons learned.

I wanted to ask initially, Commissioner Rosenworcel, I know you visited New Jersey shortly after Sandy struck, and, based on your experiences, do you have any suggestions for legislative steps we can take to help consumers during emergencies and disasters?

Ms. ROSENWORCEL. Thank you, Congressman Pallone.

I did in fact visit the New Jersey shore right after Hurricane Sandy hit, and I won't soon forget what I saw: the coast ripped apart by wind and rain and the people who lived there and their stamina and fortitude and desire to rebuild. I know that our communications networks worked during that storm, but not all of them, and on the New Jersey coast, far too few of them.

So I think your SANDy legislation is a terrific start to force us to look at network resiliency in a new way, to come up with master contacts for our Nation's 911 call centers, and also to adjust the Stafford Act to reflect a priority of communications service providers in crisis.

Mr. PALLONE. Thank you.

Let me ask Chairman Wheeler: A second component of this issue involves network resiliency. And, as you know, over 40 percent of the wireless towers went out in New Jersey during Sandy. What is the status of the FCC's proceeding on network resiliency?

Mr. WHEELER. So we have had a 911 network resiliency proceeding which we completed, and we continue to work on the other resiliency issues. I think that your legislation is helping to focus on these issues and will provide some more responsibilities to follow through on.

Mr. PALLONE. All right. I am going to follow up with you about some of this after the hearing—

Mr. WHEELER. Great.

Mr. PALLONE [continuing]. If that is OK.

Let me ask you, Chairman Wheeler, about the incentive auction. I know that running a successful incentive auction next year is one of your top priorities, and that—

Mr. WHEELER. Yes, sir.

Mr. PALLONE [continuing]. Is one of mine, as well. And I have heard some concerns that the software you are using to run the auction may not be ready in time. So I just wanted to give you a chance to respond.

Two questions. When do you expect the incentive auction software package to be finalized? And do you plan to give the impacted industries practice rounds with the software before the auction starts?

Mr. WHEELER. Thank you very much, Mr. Pallone.

The software packages are being developed over time, and are virtually all completed at this point. They are being run through an internal red team process; an outside, third-party, break-it process, if you will.

And then, specifically to your question, we will be having trials and mock auctions, where it will be tested ultimately by those who are going to use it.

Mr. PALLONE. OK.

Let me just ask you about pirate radio. I know you have been fairly successful lately in finding bipartisan support on a number of things. And I think an issue that you discussed that should have bipartisan support are the problems with the proliferation of illegal pirate radio stations. You mentioned it in your statement.

Do you think that there are any changes in the law that could help the FCC better enforce against illegal pirate radio stations?

Mr. WHEELER. Yes, sir. This has been an effort that Commissioner O'Rielly and I have both been working on, and he has particularly been the cattle prod on the activity.

But, as I said in my statement, it is Whack-a-Mole right now. They pop up, we jump on them, they pop up, we jump on them, but they just move to the next place.

Landlords turn a blind eye to this. If there was a way that we could go and say to the landlords, "Excuse me, you have some liability in this decision, as well." They just see it as income—"Hey, I have somebody that is going to start paying me money for this space. I will rent it out to them." If they understood that there were consequences from that kind of enabling and illegal act, I think that would be very helpful.

Mr. PALLONE. OK.

Did you want to respond, Mr. O'Rielly?

Mr. O'RIELLY. No. I agree with the Chairman's comments. I think I want to be careful exactly on approaching landlords. We would like to have an education process, as well. Many may not be familiar. I do not want to expose landlords in a broad category. I want to be careful when we do it.

But it is not just landlords. It is political campaigns that advertise on these illegal pirate stations. And there are a lot of other—concert promoters. There are things that we need to educate the community that should not be participating with these pirate radios. They are illegal, and we should go after all the mechanisms to eliminate them.

Mr. PALLONE. All right. Thanks a lot.

Thank you, Mr. Chairman.

Mr. WALDEN. We will now turn to the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. Well, thank you, Mr. Chairman.

I apologize to the Commission for not being here for their opening statements. As you know, we have the Health subcommittee, and they are meeting at 10, so we always have to go back and forth. So I missed their statement, but I am appreciative of the Commission being here.

Those of you that have attended hearings like this in the past, my normal routine would be to start asking the Chairman and the other members a series of questions about low-power television. I am going to submit those for the record, so I am not going to disappoint you, but we will put them in the written part of the record.

What I am going to do is kind of go off script—yes, and Greg says, "Uh-oh"—but in a positive way, I hope, bipartisan.

We just had this terrible attack in Paris, and hundreds of people were killed. We need to do something about it. ISIS and the terrorist networks can't beat us militarily, but they are really trying

to use the Internet and all of the social media to try to intimidate and beat us psychologically.

My question—and I will start with the Chairman, but then each of the members of the Commission: Isn't there something we can do under existing law to shut those Internet sites down? And I know they pop up like weeds, but, once they do pop up, shut them down, and then turn the Internet addresses over to the appropriate law enforcement agencies to try to track them down?

I would think that, even in an open society, when there is a clear threat, they have declared war against us, our way of life, they have threatened to attack this very city that our Capitol is in, that we could do something about the Internet social-media side of the equation.

So I would start with the Chairman and then anybody else who wishes to comment.

Mr. WHEELER. Thank you, Mr. Barton.

As you have done, we cannot underestimate the challenge here. I am not sure that our authority extends to picking and choosing among Web sites, but I do think there are specific things that we can do. As you——

Mr. BARTON. Well, do we need to, on a bipartisan basis, give additional authority to shut some sites down?

Mr. WHEELER. One of the issues here is the question of "What is a lawful intercept?" is something that the Congress can define. You did it in CALEA. Things have moved on since then. You know, you read in the press that they were using PlayStation 4 games to communicate, which is outside the scope of anything ever considered in CALEA. So there are probably opportunities to update the lawful intercept concept.

I think there is also a question about the security of our networks. There have been 17 fiber cuts in the Bay Area in the last few months mysteriously happening. There were two fiber cuts yesterday, not in the Bay Area but elsewhere in the country. We need to have some kind of a big-data capability of determining what is happening to our network out there. Because it is not just people getting on the network; it is, perhaps, people doing things to the network.

We have the only reporting system in the Nation that we run, called the Network Outage Reporting System, NORS. We don't have the ability to use that to go for big data, to have big-data analysis. It is barely holding together with baling wire and glue because it is using ancient technology. We have been asking for appropriations to upgrade that.

I know the appropriation process is still underway, and I know it is not this committee, but this experience has called out the importance of network security. And if we can't connect the dots—you know, after 9/11, we kept hearing about "We couldn't connect the dots, we couldn't connect the dots." We have the ability inside our systems to use big data to connect the dots, but we don't have——

Mr. BARTON. Well, my time——

Mr. WHEELER [continuing]. The capacity to do it.

Mr. BARTON [continuing]. Is about to expire. I would assume it is a "yes" answer, that the Commission will work with the committee if we need to update our laws to do so.

Mr. WHEELER. It is a capital "Yes," sir.

Mr. BARTON. OK.

Is there anybody else who wants to comment on that before—my time just expired.

Ms. ESHOO. Well, I want to thank you for raising this. And I know that the FBI, relative to the cuts in the Bay Area, have said that they need to deal with HPSCI, the House Permanent Select Committee on Intelligence. And so we will just—

Mr. BARTON. Well, it is a clear and present danger.

Ms. ESHOO. Yes. Of course it is.

Mr. BARTON. They have declared war against us.

Ms. ESHOO. And I don't think any of this is coincidental either.

Mr. BARTON. And they are using the Internet in an extremely offensive, inappropriate—

Ms. ESHOO. Effective way.

Mr. BARTON [continuing]. Way against us. And we ought to be able to make it, at a minimum, much more difficult and, hopefully, absolutely shut it down.

With that, Mr. Chairman, I would yield back.

But I will get you my questions on low-power TV.

Mr. WHEELER. I look forward to them, sir.

Mr. WALDEN. The gentleman yields back the balance of his time.

The chair now recognizes the gentleman from Pennsylvania, Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman.

And I just want to say to Mr. Barton, I wholeheartedly agree with what you said, too, and hopefully we can work on that.

Chairman Wheeler, at the risk of sounding like a broken record, I want to talk to you a little bit about special access.

Mr. WHEELER. Yes, sir.

Mr. DOYLE. First, I want to thank you for the Commission's continued work on special access. And while I was somewhat concerned that the comment deadlines were once again extended, I want to applaud the Commission for beginning its investigation into tariff rates and conditions in these markets. I believe that the Commission has worked hard and diligently on this proceeding. I just wish you would work faster. However, I know some of my colleagues on the other side of the aisle have taken issue with this proceeding.

Mr. Chairman, I have two questions.

First, if ILECs are using their market position to charge anti-competitive rates to competitors, jacking up prices for competing services, or driving competitors out of business, do consumers benefit from that?

And, secondly, does investment in broadband infrastructure increase or decrease in competitive markets?

Mr. WHEELER. Well, I think the answer to the first is "no," and the answer is "increase" in the second.

You know, one of the things that gets lost in this issue is we call it "special access." Boy, there is a term that doesn't say anything. What we are talking about is services that are necessary for competition. We ought to start calling these "competitive services."

Because you can't have cell densification, which makes wireless networks work better, without backhaul, which requires this spe-

cial access. You can't have the Internet of Things in 5G built out. It is going to do nothing but expand the need for this, let alone the kind of competitive services you were talking about that increases service opportunity by competitive providers and lowers costs.

So I think we ought to call it what it is. This is services that are essential for competition.

Mr. DOYLE. Thank you, Mr. Chairman.

Mr. Chairman, I also want to ask you, the Commission recently decided, in evaluating spectrum transitions, to take a closer look at deals that involve low-band spectrum. And the FCC recognized the unique value of that spectrum and the fact that there is already significant concentration of that spectrum among just a few carriers.

You have now evaluated several transactions in which you have conducted that enhanced review, but in each case you still decided to allow further concentration of low-band spectrum. Just last week, the Commission approved a transaction where the buyer exceeded the low-band screen established by the Commission.

My question is, what is the point of creating a mechanism for enhanced review if the Commission is not prepared to use it?

Mr. WHEELER. Well, thank you, Congressman.

I think there are two parts to that. One is you always want to have this enhanced review because that, in itself, is putting a stake in the ground, if you will.

Secondly, it is a review. And so the question becomes "Is there a legitimate application that overcomes that stake in the ground?" In this particular instance, which involves some rural broadband, some rural spectrum for AT&T, the Commission reached the decision that, yes, on the merits, this would be enhancing to service to consumers.

Mr. DOYLE. Thank you.

Mr. Chairman, let me ask you, on privacy, I am concerned about some of the ongoing reports we are seeing that ISPs are tracking consumers online by using tracking headers and other types of unsecure technologies that can endanger consumer privacy and user security. Third-party companies are already publicly claiming that they are using these super-cookies to track users online. Mr. Chairman, I just want to urge the Commission to take action and rein in these harmful practices.

And, finally, on set-top boxes, the DSTAC recently released its report on new proposals that would allow consumers to buy and use third-party devices for video programming. I believe the future of this technology is over-the-top services. I encourage the Commission to continue working on this issue. Pay-TV subscribers should not have to suffer exorbitant rental fees for poorly designed and produced equipment. And I would urge the Commission to continue your work on these proceedings.

Mr. Chairman, thank you and all of the Commission for being here before us today. I know we see you frequently, and we appreciate your input and the work that you are doing on the Commission.

I yield back.

Mr. WALDEN. The gentleman yields back the balance of his time.

The chair now recognizes the vice chair of the subcommittee on Communications and Technology, the gentleman from Ohio, Mr. Latta.

Mr. LATTA. Thank you very much, Mr. Chairman, for yielding.

And, again, to the Commissioners for being here, thanks very much.

If I could go back to a question the chairman had asked a little bit earlier to Commissioners Clyburn and Rosenworcel.

Do you have access to the Enforcement Bureau's work?

Ms. CLYBURN. Every 2 to 3 weeks, I have meetings with the Enforcement Bureau. We go through items, you can call them hot topics, so to speak. Some of them are extremely hot. You know, some are at, I guess, the genesis of some of the conversations here today.

So I have never felt that there was any information that I requested or that I needed to know what is going on in the bureau, know what's going on in the ecosystem, and make a decision that might come up to us. I have never felt—

Mr. LATTA. OK. Let me ask this, though. You say you have a meeting every couple of weeks. How current is that information from the Enforcement Bureau? Is it something that has happened in the last 2 weeks, or is it something that has gone on for weeks and months beforehand?

Ms. CLYBURN. It depends on the status of the item, so it is just all of the above.

Mr. LATTA. Could I ask a follow-up on that, then? When you say it is the status of the item, how many would be older type of enforcement work?

Ms. CLYBURN. If I had to handicap it based on the last three or four meetings, sort of 50/50. Again, an item might get teed up, and then you will get a status—

Mr. LATTA. So some of them have been going on for a lot longer before you ever find out about it.

Ms. CLYBURN. Naturally. And when you talk about NALs, notice of apparent liability, and process, you get updates. And these often take quite a bit of time, because, again, there is due process to the party that might have the NAL. So it can be a mixture there.

Mr. LATTA. OK.

Let me ask Commissioner Rosenworcel, what is your response to that?

Ms. ROSENWORCEL. My access is virtually the same as what Commissioner Clyburn just described.

Mr. LATTA. Commissioner Pai?

Mr. PAI. So the conversation thus far has focused on things that are circulated to the Commissioners for a vote—a notice of apparent liability, for instance.

What I am talking about is a list of open investigations, things that the Enforcement Bureau is doing without our knowledge that is not ultimately, perhaps, going to be presented to us for a vote.

Quite often, we hear about these things only when they reach the press. And, for example, the recent Hilton letter of inquiry is something that I learned about and my staff learned about because of press reports.

And it seems to me that it is not too much to ask for the people who are tasked by this body with setting communications policy to understand what it is——

Mr. LATTA. Let me——

Mr. PAI. The Enforcement Bureau is not an independent agency with——

Mr. LATTA. Yes, let me interrupt, if I could. When you say you got something from a press report, how long had that Enforcement Bureau's work been going on prior to you even seeing it in the newspaper?

Mr. PAI. I am not sure how long it had been going on, but it was issued contemporaneously with some other enforcement actions we took that very day.

Mr. LATTA. OK.

If I could ask Commissioner O'Rielly?

Mr. O'RIELLY. I have similar problems. But can I give you an example that just happened yesterday? We came out with an FTC-FCC memorandum of understanding. I had an opportunity to talk to some folks at the FTC. They were notified of it on last Thursday. I learned of it yesterday morning. So, I mean, it is just a lack of sharing.

Mr. LATTA. OK. Thank you.

Commissioner Pai, if I could go on to another question for you. In June, Congressman Green and I sent a letter to Chairman Wheeler stating our concerns with the direction of the DSTAC and urged the Commissioner to follow the clear statutory language set forth in STELA and ensure that the DSTAC inquiry and report do not go beyond the bounds of the statute. And, unfortunately, changes were not made to DSTAC, which was unable to reach a consensus on recommendations for downloadable security solutions for set-top boxes.

DSTAC produced a report with two recommendations, one that would rely on apps, and one referred to the AllVid. And, again, the gentelady from Tennessee had asked some questions questioning to the Commissioner on this, or the Chairman of the Commission.

If I could ask you, Commissioner Pai, on the app, if apps are already prevalent in the market and used on smartphones, smart TVs, and Apple TVs, et cetera, why isn't the FCC keeping focused on consumer demands and preferences rather than looking backward to the AllVid approach?

Also, are you concerned that such a strict technological mandate, which would take years to develop, would be obsolete by the time it is even implemented?

Mr. PAI. Thank you for the question, Congressman. And I understand that is a widespread concern. I think that here regulatory humility is called for, not just because it is imperative that the FCC hew strictly to the mandate that was set forth in the law but also because, as you pointed out and have pointed out various times before, this marketplace is changing rapidly, and so any FCC intervention could have unintended consequences.

So, therefore, I don't think it is appropriate for us to issue technological mandates or otherwise adopt proposals that could frustrate innovation, that could allow for the theft of content, that could otherwise stand in the way of consumer benefits.



Mr. LATTA. OK.

Well, thank you. My time has expired.

And, Mr. Chairman, if I could ask unanimous consent to enter the letter from Congressman Green and myself——

Mr. WALDEN. Without objection.

Mr. LATTA [continuing]. Into the record.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. I appreciate that.

We will now go to Mr. Loeb sack from Iowa.

Mr. LOEBSACK. Thank you, Mr. Chair. Thanks for having this hearing.

It is good that all five of you are here today. I really appreciate your presence and responding to questions.

Before I ask my question about USF, which I ask almost every time we have somebody here at least, I do want to mention again that I think that Mr. Barton raised a very serious issue here, not necessarily what we can do with the Internet and restricting it, whatever the case may be, but I think bigger questions beyond that even.

And, Chairman Wheeler, I was very happy to hear you—or not happy, but I appreciate the fact that you had some information on fiber cuts.

I was on the Armed Services Committee for 8 years before I got on this committee. Traveled overseas to zones of conflict often. I guess it heightens my concern, obviously, about what happened in Paris. We all are concerned about that. But then we bring it home here to our infrastructure in the United States. And the Internet fiber, all of this is part of our infrastructure.

It is absolutely essential that we know where all of this is so that we can protect it and so we can make sure that we can prevent an attack on that part of our infrastructure. I think it is really critical. So thank you for addressing that. And I am sure we are going to go forward with this, in cooperation with you folks, to make sure that we can prevent those kinds of attacks from happening on that very important part of our infrastructure.

I do want to ask about universal service. You all know—I think I have mentioned this a number of times—that I represent a very rural district. When I first got on this committee earlier this year, I went to all 24 counties, and I talked to folks about rural broadband and how important it is for the economy, for education, for health care, for farmers, economic development, on and on and on.

And folks are very frustrated in my district, especially when it comes to the USF. And so I kind of want to know what the status is, if we can have a status update for fixing the standalone broadband problem that ties the Universal Service Fund to voice service, denies support for broadband-only service in areas served by smaller rural carriers.

We have gotten bipartisan support to do something about the USF and to reform it so that we really can bring that service to folks in these rural areas. It is bipartisan.

And so I would like to get a little update, if I could, from you, Chairman Wheeler, about where we are on that. And I promised

folks last week when I was talking to them that I would ask you directly about that.

Mr. WHEELER. Thank you, Congressman.

Yes, this is a bipartisan effort. We have a bipartisan working group of three of us up here—Commissioner O’Rielly, Commissioner Clyburn, and myself—who are working on a rate-of-return carrier reform package that we hope to have on the floor of the Commission next month.

Mr. LOEBSACK. Good.

Mr. WHEELER. A lot of people have focused on a December date that we had talked about in a Senate hearing. We are not going to be controlled by the calendar, but we want to get this done quickly.

The key issue here is whether or not we are going to make sure that the money is spent for the expansion of broadband. Because that is what your consumers want. They say, “How do I get broadband further out into my areas?”

There are some proposals that are put forth that are called fixes to this that say, “OK, we will send the money out, but there is no requirement that it actually expand broadband.”

Mr. LOEBSACK. That is right.

Mr. WHEELER. And our group, the three of us, are working to say, “How do we make sure that we have money that is going out to rural areas that will result in expansion of broadband service?”

Mr. LOEBSACK. I appreciate that.

Did you want to say something, as well, Commissioner Rosenworcel?

Ms. ROSENWORCEL. Oh, sure.

Mr. LOEBSACK. Or Commissioner Clyburn?

Ms. CLYBURN. We get mixed up all the time.

Mr. LOEBSACK. Sorry about that.

Ms. CLYBURN. One of the reasons why I am so excited about working with this group is, I asked myself a question: Is there a mechanism in place when it comes to these carriers that will tell us how many households are connected? And when I could not answer that question, I said: We have to do something beyond modernizing this program. We need a way to track to make sure that we are on target, to make sure that the moneys are going to close the broadband gap.

And so this is why it is so important for us to make sure that each dollar we spend is to enable broadband deployment.

Mr. LOEBSACK. Thank you.

Ms. CLYBURN. And I am proud to work with these men to see that that happens.

Mr. LOEBSACK. Thanks to all of you. I really appreciate it.

I am near the end of my time. I do want to submit, however, a question for the record on video relay service, if I may, Mr. Chair. I would like to be able to submit that question, as well.

Thank you so much. I yield back.

Mr. LATTA [presiding]. The gentleman yields back.

The chair now recognizes the gentleman from Illinois, the chairman of the Subcommittee on Environment and the Economy, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Hey, Loeb sack, how many counties?

Mr. LOEBSACK. Twenty-four.

Mr. SHIMKUS. I have 33. So I just say "ditto" to his comments, and I don't have to go down that route.

But I would also—the good response, what popped in her head was the failure of broadband stimulus to do a lot of what we want it to do in rural America. And it was the overbuilding of competitive areas. And just on the record, being here for a while helps you remember some of the old stories, and we lost a great opportunity there.

Chairman, you mentioned clarity, consistency, completion?

Mr. WHEELER. Yes.

Mr. SHIMKUS. I like that. I am starting to wrap my mind around reliability, affordable, and sustainable. I think those are also good goals to reach in a lot of different areas. And I think it highlights telecommunication in the next era for all Americans, again, dealing with the rural changes.

But that goes to an issue that we talked about the last time, I think, when the full Commission was here. We still have a terrible problem with dropped calls in rural America. And I talked to the association this morning, said I would raise it.

I think the last answer was, "We have the rules to enforce it." I think our folks don't see it that way. Or my point is, they are still having a problem, and it is not fixed.

Do you want to comment briefly on that?

Mr. WHEELER. Thank you. Thank you, Mr. Shimkus.

Mr. SHIMKUS. Briefly.

Mr. WHEELER. I mean, there are several things. One—I will be—watch how fast.

One is that we did pass a rule that false rings, which is what was going on, are no longer allowed.

Secondly, we heard a lot about enforcement today. We have moved against three major carriers who were allowing this to happen. We just finished with Verizon, for instance, with a \$2 million fine and a requirement that they do \$3 million to fix the situation because they knew it was going on, and they did nothing about it.

So, yes, sir, we are trying to be aggressive on this front.

Mr. SHIMKUS. And let me have a followup. What is the status of this data collection effort? And will this information be made public? And, if not, why?

Mr. WHEELER. We are—

Mr. SHIMKUS. On the call completion question.

Mr. WHEELER. On the call completion, we are completing that. And to the extent that there is nonconfidential data, it will be on the record.

Mr. SHIMKUS. OK. Thank you.

I want to talk also about—because the ranking member of the subcommittee and I, we do the first responders. And Ranking Member Pallone talked about his proposal. FirstNet has to get its act together. FirstNet came to see us. I think they are making better strides. But they are on the hook if we have another major event, and we have not moved aggressively.

Now, in discussions with me, they say they now understand that they have to, in essence, contract with people who build out net-

works, which was what we were trying to say when we fought on the legislation to begin with.

But shame on us and shame on FirstNet and shame on the Commission if we have another event and we cannot communicate. So we need to all have our shoulders at the wheel and do what we can to push this.

Commissioner O'Rielly?

Mr. O'RIELLY. Can I only say that, when we were working on the statute I was working on behalf of a number of Senators, the structure that is now outlined is something I disagreed with. And the Commission actually doesn't have a great role in FirstNet. NTIA, at the Department of Commerce, has a greater role in its oversight function. I lost that debate, and now we have a process exactly playing out how I thought it might.

Mr. SHIMKUS. I think I lost some of the debate during that discussion, too, and I am not sure it is appropriately placed. And I don't think we have a—I am just concerned. I am glad they came to visit with me. But the public is not going to say, "Oh, it is NTIA," right?

Mr. O'RIELLY. True.

Mr. SHIMKUS. They are going to say FCC, they are going to say Members of Congress and the executive branch.

Mr. O'RIELLY. No, I tried to provide authority to the FCC through that process. I just lost that discussion. So if Congress wishes to give us more authority, we would be happy to have more involvement.

Mr. SHIMKUS. Thank you.

And let me just continue with you. That memo you received, you got it yesterday?

Mr. O'RIELLY. Yes, sir.

Mr. SHIMKUS. You said the FTC had it Thursday?

Mr. O'RIELLY. Yes, sir.

Mr. SHIMKUS. Commissioner Pai, when did you get that memo?

Mr. PAI. I saw it on the Web site yesterday.

Mr. SHIMKUS. Commissioner Rosenworcel?

Ms. ROSENWORCEL. Yesterday.

Mr. SHIMKUS. Commissioner Clyburn?

Ms. CLYBURN. The same.

Mr. SHIMKUS. Chairman Wheeler, do you want to respond?

Mr. WHEELER. I have been working on it for 18 months. The reality here is that it was signed yesterday, it became effective yesterday, and that—

Mr. SHIMKUS. But you understand the problem. This is illustrative of this debate about communicating. And I know we have, you know, three to two, and I know Democrats have the majority, but I would hope the Commissioners are kind of one big, happy family and work together to move telecommunications processes. Just like we do on this committee, right?

So I think it is just a little—

Ms. ESHOO. Thank you, Brother Shimkus.

Mr. SHIMKUS [continuing]. Illustrative, and everybody should have the information when everyone has the information.

And I yield back.

Mr. LATTA. The gentleman's time has expired, and he yields back.

The chair now recognizes the gentlelady from California for 5 minutes.

Ms. MATSUI. Thank you, Mr. Chairman.

Chairman Wheeler, Congress tasked the FCC with balancing many priorities in the incentive auction, including protecting access to local broadcasting.

Now, during the last few weeks, I had a chance to meet with many of our Sacramento broadcasters. They work hard to keep my constituents informed. My local broadcasters have also told me that they are invested in the success of the incentive auction.

I believe the incentive auction can clear the beachfront spectrum to fuel our wireless economy while making sure Sacramentans and consumers across the Nation still get the local news and information that they need.

My local broadcasters also brought up the concern that they could be at risk of losing their license after the auction if they aren't able to transition to a new channel assignment within 39 months. I know how critical it is to get the spectrum into the market, but we need to make sure that this transition doesn't leave TV viewers in the dark.

Chairman Wheeler, my question is: How can the FCC, number one, make sure broadcasters successfully make this transition after the auction? And two, what is the FCC's plan if broadcasters can't meet the FCC's deadline?

Mr. WHEELER. Thank you very much, Ms. Matsui.

I totally agree on the importance of local community broadcasting and why it has to remain after the auction.

Here is how it works. We had 36 months that the statute said before you have to move off after getting money. Then we put 3 months in for construction permits, which is how you got to 39 months.

Now, the interesting thing is that the National Association of Broadcasters, in our proceedings, said, "Oh, we only need 30 months." But, be that as it may, what we would do in this kind of a situation that you outlined is to have an extension. I mean, there is a 6-month extension at least that you can get on this that we will be able to work through.

This is not a drop-off-the-edge-of-the-table situation for anybody. As we see that things are approaching the edge of the table, there are solutions that can be taken.

But at the same point in time, those who are bidding on spectrum need to know that there is some certainty that they are going to get it, or else it doesn't have any value to them. And so we look at 39 months, we look at the extension, we look at certainty, and I think we can work it out.

Ms. MATSUI. So you will balance this out and work with them.

Mr. WHEELER. I think we can work with them, yes.

Ms. MATSUI. OK, great. I can assure my locals then.

Mr. WHEELER. Yes, ma'am.

Ms. MATSUI. Thank you.

Commissioner Rosenworcel, you have spoken about the need for smart spectrum policies so that the United States can continue to

lead the world in 5G. I know the FCC has taken some recent steps to look at opening up higher-frequency spectrum bands for next-generation mobile services. Congress has also acted. The Bipartisan Budget Act included important provisions.

Now, Commissioner Rosenworcel, what more can the FCC do to identify new spectrum opportunities? What more can Congress do?

Ms. ROSENWORCEL. Thank you, Congresswoman Matsui, for the question.

Today, as you probably know, the bulk of our spectrum activity takes place at 3 gigahertz or below, but, going forward, we are going to look way, way up there. And when we do, if we combine really stratospheric frequencies with dense networks of small cells, we are going to develop wireless services that go further and faster than ever before.

It is absolutely imperative that the FCC lead when we deal with this issue, because the rest of the world is starting to look at high-band spectrum and trying to find ways to deploy. We have a rule-making, and it is important that we conclude that rulemaking and identify bands where we can proceed.

Ms. MATSUI. OK. Great.

Chairman Wheeler, you have highlighted the FCC's work on a spectrum above 24 gigahertz as critical for 5G. I hope the FCC will move forward expeditiously so that we can create a climate for American leadership in 5G.

And I know this is really important. We just ought to reiterate this. When do you expect to issue final rules for this important proceeding?

Mr. WHEELER. Thank you, Congresswoman.

As Commissioner Rosenworcel just indicated, we just developed in this proposed rulemaking for 28 GHz, 37 GHz, and 39 GHz bands, as well as for 64 GHz to 71 GHz for unlicensed purposes. And we did that in a timely manner so that we could go to the World Radio Conference in Geneva, which is being held right now, and get a leg up, if you will, on advocating our position to the world.

Ms. MATSUI. OK.

Mr. WHEELER. So that was step one. We will close this rule-making by the summer, clearly. And I have also committed to my colleagues that we will also open a new rulemaking on additional spectrum up in the higher bands.

Ms. MATSUI. OK. Good.

Well, thank you very much.

And I know my time is up. I yield back.

Mr. LATTA. Thank you.

The gentlelady's time has expired, and she yields back.

The gentleman from New Jersey is recognized for 5 minutes.

Mr. LANCE. Thank you, Mr. Chairman.

Good morning to the panel.

Commissioner O'Rielly, I believe there is a good deal of room for criticism of the net-neutrality order. And I ask you what message you believe this sends internationally when our government asserts such authority over the Internet. Are you at all concerned that other nations, including some repressive regimes, could get the

wrong idea about America's commitment to free speech and free expression online?

Mr. O'RIELLY. Yes, sir. Thank you for the question.

I experienced this when I was in Barcelona recently, when we had an opportunity to talk to some of our European colleagues about what they were planning to do and what activities the United States signals were sending to their activities. And if you see what the European Union has done recently on the issue of net neutrality, it is different than what the United States has done and is actually a step back, I would say, from some of the extensive steps that we have taken and problematic steps that we have taken.

So I am troubled by what message it sends internationally, how far and how wide the United States has moved through the net-neutrality proceeding at the Commission. I think it is the wrong signal internationally. Thankfully, some of the other nations are looking at it a little differently, but it is very problematic going forward.

Mr. LANCE. Thank you.

Mr. Pai, do you have an opinion on that?

Mr. PAI. I would agree with what my colleague said. And I also have had the opportunity to speak with counterparts from South Asia to South America who have expressed amazement that, having built the Internet economy that is the envy the world, the U.S. would put that at risk with a regulatory scheme that creates more uncertainty and impedes future broadband deployment.

Mr. LANCE. Thank you.

Chairman Wheeler, you stated your intent to commence a rule-making to promulgate rules, quote, to clarify the FCC's expanded privacy authority under the new Internet rules and that you would hope that this would be forthcoming this fall.

Could you please update us on that, given the timeframe?

Mr. WHEELER. We have missed fall, Mr. Lance. And—

Mr. LANCE. Congress misses deadlines all the time, so—

Mr. WHEELER. And it is, I think, because of the significance of the issue. We have long had responsibility for privacy issues. And how that maps over into the IP world is something that I hope we will be able to begin to surface in proposals early next year.

Mr. LANCE. Thank you.

Are there other members—Mr. Pai?

Mr. PAI. Two aspects of that.

First, the agency's decision divested the Federal Trade Commission of jurisdiction, and they are the agency with longstanding expertise as well as statutory authority over this area.

In the meantime, unless and until the FCC, the five of us, promulgate rules, the binding guidance upon the agency was put out in an Enforcement Bureau advisory on May 20 of last year. And this is the core rule now that the private sector has to adhere to: "The Enforcement Bureau intends that broadband providers should employ effective privacy protections in line with their privacy policies and core tenets of basic privacy protections."

I have no idea what this means. Neither does the private sector. And the entire industry is at the mercy, from edge providers to

ISPs, as to how the agency is going to proceed in this brave new world.

Mr. LANCE. Yes, I tend to agree with that.

Would other members of the Commission like to comment?

Commissioner Rosenworcel?

Ms. ROSENWORCEL. Sure.

Privacy is a cherished principle, and it is also a complicated one in the digital age. So, going forward, we are going to have to provide more clarity. I respect that the Chairman wants to have a rulemaking on that. And I acknowledge, as Commissioner Pai said, that our existing guidance is insufficient to date.

Mr. LANCE. Yes. Thank you.

Commissioner Clyburn?

Ms. CLYBURN. One of the things that is uplifting and great about this is we have complementary jurisdiction with the FTC, and we work collaboratively. We meet on a monthly basis to make sure that consumers are protected. So our job, our collaborative, combined role is to ensure that there are no holes when it comes to protecting consumers.

And so we will work and we will get more clarity when something is before us. But in terms of the jurisdiction under section 222, our role, as provided by you, is clear when it comes to privacy.

Mr. LANCE. Commissioner O'Rielly?

Mr. O'RIELLY. I have spent a great deal of time on the issue of privacy. I have to say, I find that the Commission's understanding of the issue is lacking and its expertise is low.

The FTC spent over the last two decades becoming an expert in this space and providing guidance and providing the structure, and we are going to waltz in there and provide quite a bit of damage, I think, going forward, notwithstanding the fact that it is a very important issue.

Mr. LANCE. Thank you. I think we will continue to monitor this, and I thank you for your testimony.

Thank you, Mr. Chairman.

Mr. LATTA. Thank you.

The gentleman's time has expired, and he yields it back.

The chair now recognizes the gentleman from California for 5 minutes.

Mr. MCNERNEY. I thank the chairman.

And I thank the Commissioners for giving us your wishlist this morning. I think it was an interesting list.

Mr. Chairman, would you update us a little bit on the Commission's efforts to address cybersecurity, specifically coordination with some of the other Federal agencies?

Mr. WHEELER. Yes, sir.

As a matter of fact, next week, I am meeting with a coordinating group of the heads of all of the independent agencies of the government—Nuclear Regulatory Commission, FTC, FERC, the whole group—where we are coordinating our policies.

And the approach that we have taken at the FCC is one of the models that is being talked about across all agencies, which is, how do you work with a multistakeholder group inside your industry to come up with processes that are both self-reviewing and self-enforc-



ing, with the involvement of the agency, and how do we do that across the board?

The financial industry has been very successful in doing that. We are successfully now underway on that, and we will be continuing to work with other agencies.

Mr. MCNERNEY. Are you a lead agency in regard to this issue?

Mr. WHEELER. I would hope so, sir.

Mr. MCNERNEY. Do you think there is a potential that sort of a knee-jerk reaction to the tragic Paris attacks could actually make us less secure, specifically—

Mr. WHEELER. I am not sure what you mean by “a knee-jerk reaction.”

Mr. MCNERNEY. Well, I mean some policies that are designed to sound tough but actually cause problems, more problems than they were intended, specifically with cyber and maybe backdoor policies.

Mr. WHEELER. So, it is interesting. I was having a discussion with Ms. Matsui, who I see has left, before the hearing that—one of the things that I have found my 2 years in this job is that the regulatory process—because it provides for so much diverse input from so many different parties—is a slow process. So I think that that tends to mitigate the kind of knee jerk you are talking about.

And the fact that there wouldn’t be lots of opinions heard, I think, is not a reality that exists, as the Administrative Procedure Act set out our procedures.

Mr. MCNERNEY. Thank you.

Commissioner Clyburn, you mentioned the Mobility Fund hasn’t really been implemented yet. Do you see a path forward to that?

Ms. CLYBURN. Yes, I do. I have been working with our Wireless Bureau, and they assured me that we have a pathway to completion.

You and I have both experienced traveling down roads, traveling down state highways where we look at our phones, absolutely no bars, absolutely no coverage. At night, alone, it is not the most comfortable feeling.

And so we are looking at this, how do we ensure the safety in terms of travel, the opportunities, particularly in rural America, that they have comparable service. And I think we are on a pathway of doing that real soon.

Mr. MCNERNEY. Thank you.

Commissioner Rosenworcel, you mentioned the Federal lands for broadband deployment. What is your vision for that?

Ms. ROSENWORCEL. Well, by some measures, one-third of our Nation’s real estate is owned by the Federal Government. And they are some of the areas that have the sparsest deployment of communications services.

So the question is, what Federal facilities exist on those lands that we could use to support broadband deployment or antenna structures? And if we could identify what facilities we have, we would be in a position to expedite deployment in rural America and lower the cost of deployment while we are at it.

Mr. MCNERNEY. So the initial phase, then, would be just to identify existing facilities.

Ms. ROSENWORCEL. I think it would be important for us to identify existing facilities. I also think it would be important for us to

develop a master contract with the GSA so that the private sector that is interested in deployment would have a single contract they could use. And I also think we should consider shot clocks, which would reduce the amount of time that the Federal Government had to respond to those requests for deployment.

Mr. MCNERNEY. OK. Thank you.

Mr. O'Rielly, you mentioned that Federal Government user fees are needed. Would you expand on that a little bit?

Mr. O'RIELLY. So it is a suggestion I said. My colleague and I have had a good, healthy discussion over the years regarding in terms of incentives that may provide. I also think you need to provide a mechanism to force Federal users to relinquish spectrum, and I think that one way to do that is impose a spectrum fee.

So we put the opportunity cost to the spectrum for the Federal Government users on an annual basis, and, therefore, they have an incentive to decrease how much they use.

Mr. MCNERNEY. Thank you.

I was certainly interested in the comment on high-frequency spectrum, but we will have to put that one off.

Thank you, Mr. Chairman. I yield back.

Mr. LATTA. Thank you very much.

The gentleman's time has expired, and he yields back.

The chair now recognizes for 5 minutes the gentleman from Texas.

Mr. OLSON. I thank the chair.

And welcome to our friends from the FCC.

I am going to talk about privacy and the Enforcement Bureau this afternoon. I want to ask about what I call a what-the-heck moment I had back home.

About 2 weeks ago, Chairman Wheeler, you were on the Charlie Rose show, and you shared that in the next several months the FCC would address privacy of the networks. You stated, "We need a voice in the collection of information about us," end quote. Those 10 words set off an onslaught of what-the-heck questions from back home.

So, Commissioner O'Rielly, I may be mistaken here, but doesn't the FTC have jurisdiction over the privacy of the networks, not the FCC? Are you concerned about the takeover, mission creep of the FCC getting involved in the FTC's business?

Mr. O'RIELLY. So, as the result of our net-neutrality decision, we now have an issue regarding the privacy of networks, broadband networks, and the treatment of them under, as my colleagues highlighted, section 222.

I am extremely concerned about that and have highlighted that for a considerable amount of time and what it can mean for two different regulatory agencies to have oversight over similar information and that providers that operate on both sides of the equation will be stuck with two different regulators fighting over each other. The MOU is an attempt to try and say that we are going to cooperate, but the different treatment of the same data is going to be problematic, in my opinion.

I have also highlighted why I think that our expertise on the subject matter is pretty dormant and lacking compared to the FTC.

Mr. OLSON. Mr. Pai, your comments, sir? Same issue.

Mr. PAI. I would agree with Commissioner O’Rielly on that.

And I think it is also critical to remember that our authority, as granted by Congress, is extremely limited. Under section 222, telecommunications carriers, backed up by the FCC’s rules, have a duty to protect customer proprietary network information. That is a very narrow category of information, such things as your telephone number or what service you subscribe to. It is not the vast array of information that people think about when they think about privacy.

And so I worry, as well as Commissioner O’Rielly has suggested, that the agency’s newfound zeal to enforce these privacy mandates may bleed over to edge providers. If you like something on Facebook, is that, sort of, a consumer piece of information that consumers would expect to be private? It may well be, in which case the FCC would have the incentive and ability to get into that space.

Mr. OLSON. I share those concerns.

Any comments, gentlemen, about this MOU that came out yesterday between the FTC and FCC? Any comments about that?

Mr. PAI. I agree with what Commissioner O’Rielly has said, both in terms of process, the fact that all of us found out about it yesterday, and in terms of substance, that the MOU wouldn’t have been necessary if we had each stayed within our lanes and let the FTC handle what it is statutorily empowered to do. And if we focused on building out broadband to a lot of these areas as opposed to regulating the network heavily, this entire MOU would have been obviated.

Mr. O’RIELLY. There is one sentence or at least one clause in here that just highlights the exact problem I have indicated. It says, “... Including FCC’s authority over activities engaged in by common carriers and by non-common carriers for and in connection with common-carrier services.”

The scope of that is extremely broad. “By non-common carriers for and in connection with common-carrier services.” There is no limiting principle on that concept. I think that is very problematic.

Mr. OLSON. Again, what the heck?

And then about the Enforcement Bureau, the rise of the Enforcement Bureau, the current head was quoted last April in the National Journal as saying this: “Generally speaking, I have found that most companies want to do the right thing. And when it’s clear that something is impermissible, they generally don’t do it,” end quote. He said, “When it’s clear, they generally don’t do it.” But then he said: I’m almost always working in a gray area.

“Clear” to me means black and white. “Gray” is gray, nebulous. That gray area has earned him the title from the National Journal of “the FCC’s \$365 million man.” Back home, again, people say, what the heck?

So my question for you, Mr. O’Rielly and Mr. Pai, is: How does fines totaling \$365 million help consumers, promote innovation and investment? How come they should have that role instead of Congress?

Mr. PAI. That is a good question, Congressman. I suppose those companies should be grateful to the extent that the agency was generous. In the Ortel case, for example, it said that the FCC had

the authority to fine those companies \$9 billion, but, out of the goodness of its heart, it was only going to fine them \$5 million. But I think, in a lot of cases, it is simply a number drawn out of thin air.

And in this regard, I tend to be old-fashioned. I think, before you enforce a rule, you have to have a rule. If you are going to pick a number, it should have some grounding in objective fact and, you know, precedent. That is just not the way the enforcement operation works anymore.

Mr. O'RIELLY. Can I comment on top of that? And I highlighted this in my testimony. If you see some of the citations that we issued against First National Bank and Lyft, we didn't provide them any kind of notice that they were even coming. They didn't even know what was happening.

So the idea that you referenced, where they are working with the carriers and trying to make sure that they do the right thing, these weren't carriers; these are non-carriers—had no idea what was coming their way, and there was no communication from the Commission.

So I agree with my colleague's just point. These numbers are picked out of the air. We are not going to see \$365 million. It is great for a press release, but it is not going to actually develop.

Mr. OLSON. And that is very frightening for the market.

One final question. You guys are—

Mr. WHEELER. Could I—

Mr. OLSON. I only have a little time here. Sorry, Commissioner Wheeler, but I have one last question.

You all are in charge of the bureau, the Enforcement Bureau. Let's play like you are grade school teachers, you give them grades. What grade would you give them, A through F?

Mr. WHEELER. A.

Mr. OLSON. A.

Ms. Clyburn?

Ms. CLYBURN. A.

Mr. OLSON. Ms. Rosenworcel?

Ms. ROSENWORCEL. A.

Mr. OLSON. Mr. Pai?

Mr. PAI. Not passing.

Mr. OLSON. Mr. O'Rielly?

Mr. O'RIELLY. A fine individual but a D-minus.

Mr. OLSON. D-minus.

Thank you much. I yield back.

Mr. WHEELER. Let me say that we worked with the attorney general of Texas on that \$353 million settlement. It was billions of dollars that were crammed onto the bills of millions of subscribers across the country. And of that \$353 million, some went back to the State of Texas, as the AG insisted, and to other States. But \$267 million went back into the pockets of consumers who had been bilked because they were charged for things they did not buy.

That is rational enforcement. That is the kind of job I think that all consumers expect us to be doing. Millions of people, billions of dollars, done in conjunction with all 50 State AGs.

Mr. OLSON. I hear you, but—

Mr. LATTA. The gentleman's time has expired.

Mr. OLSON [continuing]. Pay this money right now. Yes. Again, we don't have that. You guys should not have that weapon. You should be working with our governors, our attorney generals. That is my interest.

Mr. LATTA. Thank you.

The gentleman's time has expired, and he yields back.

The chair now recognizes the gentlelady from Colorado for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman.

Well, Chairman Wheeler, I wanted to ask you, with respect to these recent enforcement efforts, the recent ones, what is your view of the FCC's authority vis-a AE2-vis your ability to take these efforts?

Mr. WHEELER. Thank you. I think we have the responsibility and the authority as granted in the act.

And the interesting thing, what we are hearing here is, so we have 19 notices of apparent liability this year. The average annual notice of apparent liabilities by the last Republican administration of the FCC was an average of 215 a year.

Ms. DEGETTE. Thank you.

Now, yesterday, the FTC and the FCC announced a memorandum of understanding for continued cooperation on consumer protection. And this MOU mentioned that the agencies are going to engage in joint enforcement actions. So are there some specific areas where you think that consumer protection is particularly at risk and where this cooperation is going to be especially beneficial?

Mr. WHEELER. Thank you.

The other thing that is key to know about that MOU is that it replaced the previous MOU. This is not some unique relationship.

Ms. DEGETTE. Right. It didn't just come up out of thin air.

Mr. WHEELER. And so what we have always tried to do is to say, OK, what are the lanes, and where do we cooperate? Because our authorities abut with these other. And I think we have an excellent working relationship with the FTC, and we were able to codify it in this MOU.

Ms. DEGETTE. And are there some specific areas in which you think you can cooperate that will be beneficial?

Mr. WHEELER. So, for instance, on the issue of the cramming that was discussed a moment ago, the \$353 million fine, we have worked with the FTC on that. It is clear that the FTC has authority over the non-common-carrier——

Ms. DEGETTE. I only have 5 minutes.

Mr. WHEELER [continuing]. Activity of common carriers.

Ms. DEGETTE. Are there other areas that you think——

Mr. WHEELER. FTC has authority over the——

Ms. DEGETTE. Cramming. Are there other areas you are going to focus on?

Mr. WHEELER. Yes.

Ms. DEGETTE. What are they?

Mr. WHEELER. So, for instance, they have authority over non-common-carrier activities of common carriers.

Ms. DEGETTE. OK.

Now, there are 14 months left in the Obama administration, and, obviously, the Commission has a lot of pending actions and rules.

One thing I think the Commission should focus on completing is any further actions on the Satellite TV Extension and Localism Act reauthorization that this subcommittee authored last Congress.

In that act, Congress directed the Commission to prepare a report on downloadable security capabilities for pay-TV content. Now, what I understand is that a technical advisory group has completed its report, and some stakeholders are seeking a rulemaking that would require changes to the set-top boxes used in cable, IPTV, and satellite TV providers. This is something Mr. Doyle was talking about a little bit.

One of the main issues we hear about from consumers over and over again is that customer service can be complicated to navigate and also onerous. And so a lot of us feel like we need to protect consumers, while at the same time giving providers and content creators the flexibility they need to adapt to changing business models.

So I am wondering if the Commission has considered, if leased set-top boxes are responsible for their own customer service, that could cause a lot of confusion.

Mr. WHEELER. So, thank you, Congresswoman.

The comment period on the recommendations of the DSTAC report ended last week. I don't know if this was an issue that was raised in the comments. I would suspect so. And we have not fully worked through those comments.

Ms. DEGETTE. Well, once you do, I would appreciate it if you would supplement your testimony so that we could get an answer to that.

Now, I, lastly, want to touch on the special access issue. Many competitive telephone providers use the physical infrastructure of incumbent carriers to provide telecom services to businesses through an arrangement called "special access."

The FCC has been considering updating the special access rules for decades, as some of us on this committee know, and it has recently completed an extensive data-gathering process to inform changes to the rules.

I am wondering, Chairman Wheeler, if, now that the Commission has undertaken such a significant effort, will this be a priority for the FCC during the remainder of this administration?

Mr. WHEELER. Yes, ma'am.

Ms. DEGETTE. Thanks.

I yield back.

Mr. LATTA. Thank you.

The gentlelady yields back.

And the chair now recognizes the gentleman from Kansas for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman.

We have heard from four Commissioners today, Mr. Wheeler, that they are getting late information, incomplete information with respect to Enforcement Bureau practices.

Your explanation implied somehow that they were untrustworthy or incapable of handling the sensitive information. I think that is counterfactual. I think they, all four, are cable people, highly capable of handling that information. And I also think it is inconsistent with how this Commission ought to operate.

And so I would certainly urge you to change that practice and would urge this committee to do all that we can to make sure that you do.

Mr. WHEELER. Well, I would hope that I was not giving an impression that they are untrustworthy. As Commissioner Clyburn said, they are briefed every 2 weeks by the Enforcement Bureau as to——

Mr. POMPEO. Thank you. I don't have much time. It was certainly the implication that I heard from you. Perhaps I got it wrong.

I want to talk about competition in the cybersecurity world. I spend a fair amount of time on this in my role on the Intelligence Committee and here on this subcommittee.

Not too long ago, you were talking about network providers, Mr. Wheeler, and you talked about a common set of standards for cybersecurity.

Mr. WHEELER. Yes, sir.

Mr. POMPEO. My judgment is that would make it easier for hackers. If you had a common set of standards, it is easier to attack.

These businesses, these network providers, are in the business of providing secure, reliable connectivity. That is how they operate their business, how they make money.

Why is it you think you can develop a set of standards that would be superior to what AT&T or Sprint or Verizon or any of the others might be able to accomplish in the world of cybersecurity?

Mr. WHEELER. We didn't develop them. They developed them. What we did was provide a coordinating body. This was a multi-stakeholder process where everybody sat down and put together the best heads and said, what are the kind of processes that we all need to make sure that we have in place, and how do we monitor those processes so that we know, are they being done, A, and, B, as you just suggested, the hackers are always working ways around, and how do we keep up with that.

Mr. POMPEO. Right. It makes no sense to me for a common set of standards to be a regulatory tool that the FCC issues. It just makes it simple.

Mr. WHEELER. We have not issued them, sir. It is not a regulatory tool.

Mr. POMPEO. Great. I am glad that you have now committed to not doing that today.

Mr. WHEELER. No, let me——

Mr. POMPEO. I appreciate that.

Mr. WHEELER. We have a process that was developed in conjunction with—it is not developed as a rule, OK? It is flexible. It is designed to be flexible——

Mr. POMPEO. Great.

Mr. WHEELER [continuing]. For the very reasons you are talking about.

Mr. POMPEO. I am thrilled.

You talk about competition all the time. The IP transition is supposed to make sure we have the most updated technology. And yet the Commission, when it decided to impose requirements that carriers provide IP-based wholesale replacement services to competi-

tors, the fiber facilities, that you said you required, quote, “reasonably comparable to those of legacy services.”

Why would you create what appears to me to be a real disincentive for deploying new facilities and new services?

Mr. WHEELER. Thank you, sir.

Because of the fact that you don’t want a situation where regulation is encouraging the people who are currently using competitive facilities to not be able to have equivalents.

So if I am selling a service to you and it is based on copper and suddenly the carrier decides, I am taking the copper out or shutting it down, I need to be able to continue to provide a service to you. And so, if that migrates over into fiber and IP, I ought to still be able to have a relationship with that carrier so that I can continue to provide the service to you.

Mr. POMPEO. Commissioner Pai, do you agree with that analysis in terms of the disincentive it creates for build-out?

Mr. PAI. I don’t, Congressman.

And I think you put your finger right on the concern. The notion that the government should force one company to stay in a business that it doesn’t want to be in for the benefit of another company is the very definition of intrusive government intervention.

Instead, we should recognize that the marketplace is much more competitive, that cable companies are deploying metro Ethernet, that wireless is increasingly an alternative, and get out of this business of, you know, sort of, Depression-era regulation of a marketplace that simply isn’t the way it was back in the 1930s.

Mr. POMPEO. You actually made the case more articulately than I did. Thank you.

Mr. WHEELER. But nobody is saying that you should stay in a business you don’t want to be in. What the rule says is that you can’t shut somebody off without offering them the same kind of service in your new technology.

Mr. O’RIELLY. Well, and the rule also states, Congressman, that you can’t change your services without our permission, which we will never give you.

Mr. WHEELER. Which has been the rule forever.

Mr. POMPEO. Right.

Mr. WHEELER. That is in 214.

Mr. POMPEO. Would you agree we should that rule?

Mr. WHEELER. Section 214—

Mr. POMPEO. But, no, I am asking—no, I understand the history.

Mr. WHEELER. Section 214—

Mr. POMPEO. So it has not only been there a long time, but you like it.

Mr. WHEELER. Section 214 has been the bedrock of telecommunications policy for the last 80 years.

Mr. POMPEO. Chairman Wheeler, have you read the reports, Reuters reports, about WCRW and its connection to control by Chinese entities?

Mr. WHEELER. Yes, sir.

Mr. POMPEO. Tell me what the FCC is doing about that and what your position is with respect to that particular station that is airing pro-Chinese communications here in the United States.



Mr. WHEELER. We have an investigation going on to find out, with the representations that have been made along the way as they filed for increases in power and other kinds of things. We learned about it through the Reuters report, just as you did.

Mr. POMPEO. Great. And so I assume, because there is an investigation going on, there is nothing more you will share with me this morning. Is that correct?

Mr. WHEELER. Thank you, sir.

Mr. POMPEO. Great. Thank you.

I yield back the balance of my time.

Mr. LATTA. The gentleman yields back.

And the chair now recognizes the gentleman from Kentucky for 5 minutes.

Mr. YARMUTH. Thank you very much, Mr. Chairman.

Thanks to all the Commissioners for their testimony and appearance.

A couple years ago, I was in a middle school in my district, which is Louisville, Kentucky. And it is a school that is not atypical in an urban setting. Ninety-five percent of the kids were on free and reduced lunch. And I asked the principal what percentage of her students she would estimate had access to the Internet at home. She said probably 10 percent. And, you know, that breaks your heart because you know those kids are lost, particularly if they are already in middle school.

So what we have been trying to do in Louisville is—broadband, expanded broadband is great. Wireless technology is great. But there are families who can't afford \$10 a month for whom broadband means nothing because they don't have a computer, whose only access might be through the phone, and so forth.

So we have been trying to do a local initiative to try and just create in some neighborhoods public WiFi, free WiFi, so kids could at least be able to have it, whether they have a tablet or a phone. And AT&T and others have been very helpful in trying to accomplish that.

So I would just throw that out as—I know some of you are sensitive to this. But as you consider expanded access, that is a critical consideration.

Secondly, earlier this year, I introduced the Keep Our Campaigns Honest Act, which would require the FCC to use its existing authority to require disclosure of those who are funding campaign spots.

We just concluded a campaign in Kentucky in which the vast majority of all the ads run for both gubernatorial candidates were run by outside groups. Nobody knows who they were. Nobody still knows who they were. I would say that my constituents' reaction was that, if there were a lot of Styrofoam bricks available, they would have bought as many as they could have afforded. The outrage was palpable.

So, once again, I would request that the Commission consider that. We are going into a campaign that has already started with anonymous ads. And this is something that I think is a high priority for Americans, and it is certainly for, I think, the benefit of democracy that people know who they are being influenced by.

I know Chairman Walden has a problem with the KOCH Act, as we call it, because he says it would require too many donors to be listed. But I think the Commission could do something; say, anybody who funded more than 25 percent of the ads, so, at the most, you would have four people identified in the ad. But, again, I think this is critical, and I would urge you to proceed on that.

And, finally, a question that I have to ask because the person I live with would not welcome me back unless I did. And I am new to this subcommittee and relatively new to the committee, so I may have missed something, but where does the implementation of the requirement on volume of ads in television shows stand? Because, anecdotally, it seems that it has not been implemented very extensively.

I would throw it open to anybody. Chairman?

Mr. WHEELER. So, first of all, I understand the reporting-to-a-higher-authority challenge that you face.

And, you know, the interesting thing that is going on, I can't answer specifically—and I will get something for the record for you—but the interesting thing that we are now seeing is that there is actually a decrease in the number of ads on most of the major networks right now, as they are feeling the pressure from online competition and people not wanting to sit through ads.

And that is the marketplace operating, and that is an encouraging thing. I am not sure what an agency's role should be in saying there should be this many ads, but—

Mr. YARMUTH. No, I am not talking about the frequency, the number of ads. I am talking about the sound volume.

Mr. WHEELER. Oh, the sound. Oh.

Mr. YARMUTH. The sound volume.

Mr. WHEELER. Yes, Commissioner Clyburn has just passed me a note saying—

Mr. YARMUTH. Thank you.

Ms. ESHOO. Would you yield just for 2 seconds?

Mr. YARMUTH. Sure. I yield.

Ms. ESHOO. It is going to be on my tombstone as the only thing that people in the country know me for. But thanks for asking about it.

Mr. YARMUTH. And I actually notice that there are some commercials, actually, where the volume drops. And I don't know whether that is intentional, somebody trying to get people to pay more attention or not. But I am just curious as to where the enforcement mechanism is or whether it is being enforced.

Mr. WHEELER. I would be happy to get back to you on that.

Mr. YARMUTH. Thank you very much, Mr. Chairman. I yield back.

Mr. LATTA. Thank you.

The gentleman yields back the remainder of his time.

And the chair now recognizes the gentleman from southeastern Ohio for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

And I thank our panel members for being with us today.

Chairman Wheeler, as you know, we had concerns about your proposal to relocate the 200 servers from your headquarters to West Virginia. We sent you letters to that effect. Those concerns

were not with the purpose of the move but the disruption that it would cause to operations and the risk of data loss.

We have had a number of open inquiries and investigations on the FCC, and we are still waiting on some of those documents to be produced.

So, according to the materials that you provided in response to our letters, you were permitted, at your request, to reprogram \$8.5 million for this effort. How much did the move actually cost? Did it cost \$8.5 million?

Mr. WHEELER. I don't know that off the top of my head.

Mr. JOHNSON. You don't know the answer for that? So you don't know whether it was more? Less?

Mr. WHEELER. I can get you—

Mr. JOHNSON. Can you get me that, please?

Do you have a plan for where you plan to move—if it didn't cost the \$8.5 million, do you have a plan for where you intend to put the surplus that you asked for?

Mr. WHEELER. I don't know that it exists.

Mr. JOHNSON. OK. So you will get that back for the record?

Mr. WHEELER. Yes.

Mr. JOHNSON. All right.

Well, suffice it to say the move didn't go as smoothly as we were told it would. You ran into problems with cabling that were attributed to the contractor. And the move took an additional 3 days, according to senior FCC management.

According to at least one press report, employees were told to stay at home when the problems were encountered, and you were unable to get all the systems back up and running in the time that you allotted. Is that true?

Mr. WHEELER. Yes, sir.

Mr. JOHNSON. OK.

According to another report, a senior FCC manager stated, "We could have always asked for more time up front, possibly padded our schedules. Instead, we chose to be ambitious in our timelines because that is what a startup mentality culture does."

So the way I read that statement is, rather than appreciate the impact of taking the agency off line on other organizations, agencies, regulated entities, and the public, a decision was made to go for the sound bite. Am I reading that wrong?

Mr. WHEELER. Yes, sir.

Mr. JOHNSON. OK.

Well, then, didn't the FCC have the final say on the plans for the move? How did you allow this to happen?

Mr. WHEELER. No, I think that this was a question of what is a logical way of doing it—

Mr. JOHNSON. I am an IT guy, Chairman Wheeler, and I have been doing implementations for a long time, and any planning up front includes planning for things like this.

Mr. WHEELER. I am an IT guy, too. I agree.

Mr. JOHNSON. Did you guys have that in your consideration?

Mr. WHEELER. Yes, sir. And we built in, and it was wrong.

Mr. JOHNSON. OK. Good. So you acknowledge that that was a failure.

Mr. WHEELER. But I must say—

Mr. JOHNSON. Good.

Mr. WHEELER [continuing]. I think that our staff is fabulous—

Mr. JOHNSON. Let me move on. Let me move on, Mr. Chairman.

Does the FCC have in place a policy on the approval and the use of social media and Web 2.0—for example, using Twitter and YouTube? Such a policy would seek to insulate the FCC from cyber threats and social engineering, would it not?

Mr. WHEELER. I am sorry, do we have—

Mr. JOHNSON. Do you have a policy on the approval and the use of social media and Web 2.0, like Twitter and YouTube?

Mr. WHEELER. On our—

Mr. JOHNSON. On your employees.

Mr. WHEELER. Yes, we have a policy.

Mr. JOHNSON. You do.

Does the FCC have general guidelines for use of these technologies for FCC employees in their official capacities, in their responsibilities of FCC employees?

Mr. WHEELER. I believe so, that it said use it in your official capacity.

Mr. JOHNSON. You say you believe so. You do, or you don't?

Mr. WHEELER. No, I believe so. And I believe that the counsel is to use it appropriately in your official capacity.

Mr. JOHNSON. Do these guidelines extend to the use of these technologies for FCC employees in their unofficial capacity?

Mr. WHEELER. This is a question of the use of FCC facilities for unofficial activities—

Mr. JOHNSON. In their unofficial capacity—

Mr. WHEELER. Yes, sir.

Mr. JOHNSON [continuing]. Are there guidelines on how FCC employees should be using those kinds of technologies?

Mr. WHEELER. Yes, sir.

Mr. JOHNSON. Can you describe to us what those policies are?

Mr. WHEELER. You are supposed to have—you are using this for official purposes. I believe that there have been actions taken against some employees who didn't. I believe that there have been Office of Inspector General inspections in some situations and that people have lost their jobs.

Mr. JOHNSON. OK.

Well, are you familiar with the several videos posted online memorializing the server move? Have you seen some of those videos?

Mr. WHEELER. No, sir, I haven't seen those.

Mr. JOHNSON. Well, in these videos, the Commission revealed several pieces of non-public information, including the names and license plates of some FCC employees, the types of servers the FCC is using to store important and sensitive data, and many pictures of the specific setup the FCC has at its new data center.

Chairman Wheeler, it is a little hard for me, as an IT professional, to take seriously the FCC as an agency that wants to be a privacy and cybersecurity regulator when it sacrificed important cyber information, employee privacy, at the altar of good PR.

Commissioner Pai, were you aware these videos were being posted?

Mr. PAI. I was not, Congresswoman.

Mr. JOHNSON. Commissioner Clyburn, were you aware that the videos were being posted?

Ms. CLYBURN. I was not.

Mr. JOHNSON. Commissioner Rosenworcel?

Ms. ROSENWORCEL. No.

Mr. JOHNSON. No?

Commissioner O'Rielly?

Mr. O'RIELLY. No, sir.

Mr. JOHNSON. OK.

Mr. WHEELER. I was not either, sir.

Mr. JOHNSON. You were not either? OK.

Chairman Wheeler, our colleagues on the Committee on Appropriations are currently working on final provisions to fund our government agencies. Among the issues that they are tackling as part of that process is putting into law a ban on the FCC's use of its authority to regulate rates for broadband Internet access service, consistent with your consistent statements to Congress that FCC won't regulate, rate-regulate broadband.

It is my understanding that Appropriations staff asked the FCC to provide technical assistance in drafting this provision and that the FCC refused to provide Congress with the benefit of your expertise. It is completely inappropriate for an agency of the government to refuse to engage in the provision of its expertise to the Congress.

When will you remedy this situation? And can you assure that it will not happen again? Are you guys going to provide that information to the Appropriations staff or not?

Mr. WHEELER. I was unaware of that situation, Congressman. I do think that it is unnecessary to put those kind of riders on the Appropriations—

Mr. JOHNSON. But that is not your call. That is not your call. That is Congress' request. Are you going to provide the information?

Mr. WHEELER. I was unaware of the situation—

Mr. JOHNSON. And are you going to provide the information?

Mr. WHEELER [continuing]. It is not hard to figure out how to draft it. Yes, sir.

Mr. JOHNSON. OK. All right.

Mr. Chairman, my time has expired.

Mr. LATTA. Thank you very much.

The gentleman's time has expired.

And the chair now recognizes the gentlelady from New York for 5 minutes.

Oh, I am sorry. I didn't see Mr. Butterfield come back in.

Mr. BUTTERFIELD. Thank you, Mr. Chairman.

Mr. LATTA. The gentleman is recognized for 5 minutes.

I am sorry.

Mr. BUTTERFIELD. Thank you, Mr. Chairman.

Let me first direct my question to you, Chairman Wheeler. As I understand it, the congressionally mandated Downloadable Security Technology Advisory Committee report provides no assurances that, under the AllVid approach, unlike an apps approach, congressionally mandated protections like privacy and emergency alerts would be honored.

Now, tell me, how does that serve the public interest?

Mr. WHEELER. I am not sure I understand the question, that this is—

Mr. BUTTERFIELD. Maybe I am reading it incorrectly. Let me try it again.

As I understand it, the congressionally mandated Downloadable Security Technology Advisory Committee report—

Mr. WHEELER. Right.

Mr. BUTTERFIELD [continuing]. Provides no assurances that, under an AllVid approach, congressionally mandated protections like privacy and emergency alerts would be honored. Does that serve the public interest?

Mr. WHEELER. So, thank you, Congressman.

Mr. BUTTERFIELD. Yes.

Mr. WHEELER. AllVid was a half-a-dozen-years-ago kind of approach. I know people like to characterize what is going on as the resurgence of AllVid.

What we did was to have a report that dealt with the security issues involved in fulfilling our section 629 responsibilities. And the comments on that just closed last week.

Mr. BUTTERFIELD. OK.

Mr. WHEELER. I am unaware, having not been through the comments yet or seen a briefing on the comments, of the kind of issues that you have raised having been raised in the comments, but I will certainly look for them.

Mr. BUTTERFIELD. And if this approach does not honor licensing terms that are negotiated between programmers and MVPDs, how would that affect the diversity of programming available to consumers?

Mr. WHEELER. So, as I said to Ms. Blackburn, one of the reasons that you had the security discussion to begin with was the protection of copyrights so that the kind of situation you talk about wouldn't happen.

Mr. BUTTERFIELD. Does that also give online video distributors a competitive advantage over traditional distributors, as OVDs would not be overburdened by the rules? Does it give a competitive advantage to the traditional distributors?

Mr. WHEELER. I think we want to make sure—the question is—so there are online over-the-top services coming through on the Internet part of the cable that comes into your house. The question then becomes, on the cable part of the cable, if you will, what is the impact of the set-top box?

And the important thing—because I know this committee is very interested in making sure that there is no thwarting of innovation through regulation. And we share that, as well. One of the questions that I hope was addressed—and I look forward to the comments—is what is the impact of the set-top box on thwarting the kind of opportunities for consumers that I think you were just talking about.

Mr. BUTTERFIELD. All right.

Let's go to Lifeline modernization. Lifeline modernization appears to be on good track, but the question still remains, how do we create a wireless broadband solution under the current rate of \$9.95?

Mr. WHEELER. So, yes, it is on track. And, thanks to Commissioner Clyburn for the work that she has been doing, Commissioner Rosenworcel and her calling us out constantly on the homework gap, we are going to address those problems.

And I think that if you look at the kind of capacity that can be bought at that kind of price, that what we want to do is give people the opportunity to do that and to exercise their own choices along the way, as well.

Mr. BUTTERFIELD. Can you speak to how you intend to promote competition among Lifeline providers at this price?

Mr. WHEELER. Consumers should have choices.

Mr. BUTTERFIELD. Finally, how will the FCC ensure that voice-only still remains a service offering for eligible low-income consumers?

Mr. WHEELER. It is important.

Mr. BUTTERFIELD. All right. The next question would take longer than 40 seconds, so I am going to stop right there and yield back.

Mr. LATTA. Thank you very much.

The gentleman yields back the balance of his time.

And the chair now recognizes the gentleman from Illinois for 5 minutes.

Mr. KINZINGER. Thank you, Mr. Chairman.

And thank you all for being here today and having a good time with us. We appreciate it.

Mr. Chairman, before I get started with my questions, I am going to ask unanimous consent to include in the record a letter from the Illinois Chamber of Commerce on the need for a regulatory approach at the FCC that fosters investment and innovation in the deployment of technology.

Mr. LATTA. So ordered.

[The information appears at the conclusion of the hearing.]

Mr. KINZINGER. Chairman Wheeler, I understand that the FCC has established a broadcast reimbursement deadline of 39 months after the auction. If the Commission plans to repack up to 1,100 local TV stations, there is a reasonable question about whether that 39 month deadline is technically feasible with so few tower crews, structural consultants, a lack of antenna manufacturing capacity, among other things.

Even if we assume that all of those issues are resolved, there is still the outstanding issue of whether or not the relocation fund will be sufficient to pay for moving all of the broadcasters. You have responded to some of those concerns, stating that you have no reason to believe that the \$1.75 billion broadcaster relocation will be insufficient to cover their relocation costs.

That leaves a secondary question of, what if the fund isn't sufficient to pay for the moving of all broadcasters? Again, your Commission stated that you believe the fund will be sufficient, but if it is not, the FCC has the authority to develop a prioritization scheme for reimbursement claims. What would this scheme entail?

Mr. WHEELER. So, obviously, it is a hypothetical at this point in time—

Mr. KINZINGER. Right.

Mr. WHEELER [continuing]. And you would want to know what the realities of the situation are. The \$1.75 billion is a number that set by the committee, and we will adhere to that. There is——

Mr. KINZINGER. Well, no, I understand. I have limited time, but if it is not sufficient. So you said you would prioritize.

Now, are you saying that you would provide funding over the \$1.75 billion? Or would you be pulling from one broadcaster to pay another? How is that going to work?

Mr. WHEELER. So we are limited to \$1.75 billion. One of the challenges of the whole auction is it is an auction, and you don't know what the result is going to be.

Mr. KINZINGER. Yes.

Mr. WHEELER. And so we could sit here and hypothesize——

Mr. KINZINGER. But we need to hypothesize, to an extent, because——

Mr. WHEELER. I am sorry, what?

Mr. KINZINGER. I said, to an extent, we need to hypothesize, because we have to plan, we have to understand so we are not surprised.

Mr. WHEELER. And what that means is you have to be ready to be able to deal with the issue should it arise.

Mr. KINZINGER. Yes.

Mr. WHEELER. And that includes maybe coming back to Congress and saying, hey, there were some judgment calls here that didn't work out. And so, that may be——

Mr. KINZINGER. But you see it—potentially on the table would be prioritizing broadcasters or maybe pulling from one——

Mr. WHEELER. So, actually, I think that the broadcasters—I don't want to get in the situation where you are picking and choosing.

Mr. KINZINGER. Yes.

Mr. WHEELER. That is not the job of this agency.

Mr. KINZINGER. No.

Mr. WHEELER. I do want to be in a situation of adhering to the law, which says 1.75.

Mr. KINZINGER. OK.

Mr. WHEELER. And if that means we have to come back and say to the committee, hey, it didn't work and here are the facts—but I haven't got those facts to give you now.

Mr. KINZINGER. OK.

For the whole panel, let's assume for a moment that the 39 month deadline for relocating broadcasters can't be met. And I know you assume it can. Let's assume for a moment it can't. Would you allow broadcasters to be forced off the air at that point?

Mr. WHEELER. No.

Mr. KINZINGER. I guess we will start with Mr. O'Rielly.

Mr. O'RIELLY. No, sir.

Mr. PAI. No.

Ms. ROSENWORCEL. No.

Ms. CLYBURN. Absolutely not.

Mr. WHEELER. No. And the interesting thing is we have a 6-month extension that is provided for now. And the other thing that is fascinating to us is that, when the NAB participated in this, they told us they would only need 30 months.

Mr. KINZINGER. OK.



Mr. WHEELER. And, we are all learning as this process goes on.

Mr. KINZINGER. Yes.

And not to skip back to the relocation fund, but one of the things I want to make sure, though, is one of the possibilities is not forcing broadcasters to then shoulder the cost of it if it is above \$1.75 billion, right?

Mr. WHEELER. This is clearly no one's goal.

Mr. KINZINGER. OK. Well, that is good. It is not anybody's goal; I just want to make sure it is not really there as an option.

Mr. WHEELER. I understand, Congressman.

Mr. KINZINGER. Commissioner O'Rielly, in a welcome sign of the kind of collaboration that we expect but seldom see on the Commission, you and Commissioner Clyburn both issued a joint statement of support for the public notice recently issued to remind USF recipients of expenditures that should not be supported by the universal service.

Your joint statement went further and stated concerns with certain other expenses not related to the provision of service, such as for artwork and cafeterias, that may be permitted under certain readings of the rules. You both called on the Commission to initiate a proceeding to address these issues in the coming months.

Commissioner O'Rielly, what would be the benefits of such a proceeding?

Mr. O'RIELLY. So the vast number of rural carriers do a wonderful job in serving and completely don't do some of these practices. But we have found that some providers have been doing a very interesting reading of our rules. We do not believe that the scarce universal service funding should go to things like artwork within the building of the provider or building a cafeteria for their employees. So we want the dollars to be spent on building out networks and providing service to consumers.

Mr. KINZINGER. And, basically, everybody on the panel would agree, I think, this?

Mr. WHEELER. Yes.

Mr. KINZINGER. All right.

Mr. Chairman, hopefully that is—

Mr. LATTA. Thank you very much.

Mr. KINZINGER [continuing]. That is good input. And I will I yield back.

Mr. LATTA. The gentleman's time has expired.

And also, the chair has heard that we might have votes around 1:05 to 1:20. So if we can keep our questions at 5 minutes, I would appreciate it.

And the gentleman from Vermont is recognized for 5 minutes.

Mr. WELCH. Thank you very much. Sorry for my absence.

First of all, I want to thank the Commission for the tremendous work that you do. There are very hard, contentious issues. In the hope that we have on this committee—Bob Latta and I, of course, started the Rural Working Group—and I know the hope on your Commission is that you would find ways to work together in a contentious time.

But let me ask, Commissioner Pai, you had indicated your problem with the enforcement process now, and I heard you loud and

clear. I just thought I would ask Mr. Wheeler, I would give you an opportunity to respond to that.

Because I assume all of you hope, against hope at times, that you can get a bipartisan votes. That eludes us on this panel more than we would like. It eludes you on your Commission more than you would like.

But, Mr. Wheeler, I would like you to at least have an opportunity to respond to Commissioner Pai.

Mr. WHEELER. Well, thank you. And, as I said, we have been following the processes that have been in place for the Commission for years and years and years. There are actually fewer notices of apparent liability that have been issued than when Commissioner Pai was in the General Counsel's Office. So there have been some changes in that regard.

We want to make sure the Commissioners continue to get briefed on a regular basis, as they always have. And we want to recognize that there are certain things that are law enforcement activities and certain things that are policy activities.

Mr. WELCH. Yes. All right. Thank you.

And, Commissioner Rosenworcel, I want to thank you.

Commissioner Rosenworcel came up to Vermont. People were impressed. You might want to have her in Indiana.

But you were talking about the homework gap. And that is, in fact, a big deal. What kind of progress are you making, and what can we do to be helpful?

Ms. ROSENWORCEL. Thank you. I appreciate the question. And I appreciated the opportunity to head home to New England, too.

I think the homework gap is the cruelest part of our new digital divide, but it is within our power to bridge it and fix it. We can update a low-income program known as Lifeline to make sure it supports broadband. We should focus in a laser-like way on households that have children who are in school. And we should also promote the availability of more unlicensed spectrum and WiFi.

Those things will all make a difference, as will more public- and private-sector partnerships to help bring computers and broadband to students who are in school.

Mr. WELCH. OK.

And you also spoke in the beginning about "dig once."

I wonder, Mr. Pai and Mr. O'Rielly, that seems to me to be such a practical way to try to avoid cost and have the money spent really, Mr. O'Rielly, in the way you were suggesting, where other monies were not properly spent.

Is that something we can make progress on? Ms. Eshoo has been a leader on this. But I will start with you, Mr. Pai, and then you, Mr. O'Rielly.

Mr. PAI. Thanks for the question, Congressman.

I think, absolutely, there is bipartisan agreement here, as there is on this panel, on "dig once" and other policies like it. As I pointed out in my testimony, I think the six pieces of legislation that you have introduced and/or are considering are terrific.

And I have seen that for myself. Just last week, I was in Hammond, Louisiana, stringing fiber along mud in the Bayou, and I heard firsthand how difficult it is to navigate around some of these regulatory obstacles.

Mr. WELCH. Well, Mr. Chairman, I hope we can really do that. Mr. O'Rielly?

Mr. O'RIELLY. Yes, I support the legislation, but I think it may require Congress to—we can't do it ourselves—require congressional action, and we support that.

Mr. WELCH. OK. So you are really recommending to this panel that we do everything we can to do something sensible to save money and expand access.

Mr. O'RIELLY. Absolutely. And there is a number of build-out ideas my colleagues and I have had, and we think those would be very hopeful.

Mr. WELCH. All right.

Mr. Chairman, I move the bill. We can get away with it. We are here.

Mr. LATTA. Is the gentleman yielding back there?

Mr. WELCH. I am not yielding. I still have another minute.

Mr. LATTA. OK.

Mr. WELCH. Mr. Wheeler, on the broadband speed, you know, there are two standards out there now, 10/1 versus 25/3. So that conflict is a conflict, and I am wondering if you can address that.

Mr. WHEELER. Thank you, Congressman.

Yes, 25 down and 3 megabits up is what we call table stakes, and it is available today to about 80 percent of the population. The problem is it is not available to 20 percent of the population, and how do we get there.

So, first, you have to have universal service reform that makes sure that money is being spent to expand broadband. And then, secondly, you have to recognize that this is a growing process, that the most expensive part of building broadband is laying the fiber. After that, it is all electronics, and the cost actually declines.

So how do we get broadband, good broadband, but not what we would like to see across the board, out first? And that is what we are saying. So we will support 10/1 as a minimum. But a lot of people are building more. I was at the NTCA convention and met a gentleman from North Dakota who said that he serves 14,000 square miles, has 4,000 subscribers, and he has fiber to the home.

Mr. WELCH. That is great.

I see my time is up, but I just want to at least thank—I can't ask my question—Commissioner Clyburn, who also came to Vermont and gave an outstanding presentation to all our utility folks.

So thank you very much, Commissioner.

Mr. LATTA. Thank you.

The gentleman's time has expired.

The chair now recognizes the gentleman from Missouri for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman.

Chairman Wheeler, I am going to channel my inner Chairman Dingell here and ask for a yes-or-no answer to a simple question.

Isn't regulating broadband providers, but not anybody else, going to create confusion or even a false sense of security among consumers that whatever rules apply to broadband providers will apply to whoever sees their information on the Internet, yes or no?

Mr. WHEELER. I am sorry, I didn't understand what you were saying at the end. Whoever sees——

Mr. LONG. Shouldn't consumers have the same protection on privacy issues, shouldn't they assume that they have the same protection, whether they are going over a line or whether they are using a third party? Shouldn't the protections be the same?

Mr. WHEELER. There should be uniform expectation of privacy, yes, sir.

Mr. LONG. OK.

Even if you can't or just don't want to impose privacy obligations on other entities, what steps should other agencies or Congress take to ensure that consumers' information is protected in a uniform manner on the Internet?

Mr. WHEELER. Well, as you say, we have said that we will not regulate edge providers. And the FTC has moved with its own set of guidelines. The administration has its white paper. And I expect that what we do will be operating within those same kind of concepts so that there is some parity along the way.

Mr. LONG. Regulating the edge providers differently.

Mr. WHEELER. No, we will not be regulating the edge providers differently.

Mr. LONG. You won't.

Mr. WHEELER. We will not.

Mr. LONG. OK.

Commissioner Pai, do you want to weigh in on this?

Mr. PAI. Congressman, I think this is essentially the problem, is that if consumers are to have a uniform expectation of privacy, then it would seem to follow from that that everybody in the broadband ecosystem, from your Internet service provider all the way to the edge provider, should face the same regulations.

Mr. LONG. Right. I mean, to me, that makes common sense, and that is what I am trying to get to.

Commissioner O'Rielly, do you have any comment on that?

Mr. O'RIELLY. I agree with my colleague's point. I imagine that when this item is done we are going to have different regimes for different types of—based on the provider used or a third-party provider. And that is going to be problematic for consumers.

Mr. LONG. OK.

Chairman Wheeler, in STELA, this committee requested that the GAO, Government Accountability Office, study the impact of any phaseout of the compulsory copyright licenses for cable and satellite on the related provisions in the communications law. The GAO is currently conducting that study and has yet to report back to Congress on its findings.

I have concerns with the FCC moving ahead and repealing exclusivity rules which are interrelated with these licenses before GAO has reported back to this committee and has made any pre-determination as to the appropriate public policy decision. Is it necessary that the FCC phase out these rules now, which seems premature?

Mr. WHEELER. Thank you, Congressman.

STELA also required the Commission to begin a proceeding on retransmission consent negotiations. Exclusivity is an issue that

factors into that. I think that is the appropriate place to address it.

Mr. LONG. OK.

I will stay with you, Chairman Wheeler. I have a little time here left, I think.

As you know, the committee has been very active in working to find ways to get more spectrum into the commercial marketplace to fuel the growing need for broadband. We have taken a series of legislative steps to make that happen, but the FCC plays a crucial role here also.

One area where we can make quick progress is commercializing the spectrum of 1675 to 1680 megahertz. This spectrum has been the subject of a 3-year-old proceeding at the FCC, and both Congress and the administration have offered budget language encouraging its use for the wireless broadband by 2017. So how and when will the FCC complete these proceedings?

Mr. WHEELER. For 16 gig? We are looking—

Mr. LONG. Yes.

Mr. WHEELER. We are looking at all of the above-3-gig spectrum. I believe that we will—

Mr. LONG. 1675 to 1680 megahertz is what I am—

Mr. WHEELER. Megahertz?

Mr. LONG. Yes. Not gig, megahertz.

Mr. WHEELER. Sorry. I thought you were talking about the upper band.

I can't answer that question specifically, sir, and give you a time. I will be happy to get back to you.

Mr. LONG. Yes, I would love for you to get back to my staff on that.

And, as you know, this committee has been very active in working to find ways to get more spectrum into the commercial marketplace to fuel the growing need for broadband. We have taken a series of legislative steps to make that happen. But, like I say, you all play a crucial role. So if you could check that out and get back to me, I would really appreciate that.

Mr. WHEELER. We certainly agree with the importance of doing that.

Mr. LONG. I yield back.

Mr. LATTA. Thank you.

The gentleman yields back.

And, also, the members see that they have just called our first votes, with about 13:49 left.

And the chair now recognizes the gentlelady from New York.

Ms. CLARKE. Thank you, Mr. Chairman. And I thank our ranking member, Ms. Eshoo. And I would like to thank our Commissioners for their appearance and responses today.

Like many of you, I am encouraged, actually excited, about the recent signing of the bipartisan budget agreement, which included provisions of the Spectrum Pipeline Act of 2015 that is based on a draft that my office introduced. And I look forward to the FCC fulfilling the goals of this act and identifying and repurposing wireless spectrum from Federal to commercial uses.

More spectrum can only translate into more opportunities for our Nation's citizens, particularly those from historically underserved

communities where wireless broadband is often the only gateway to opportunities.

On this point, I have a question related to increasing engagement for seasoned and aspiring entrepreneurs and businesses of color in the upcoming spectrum auction and beyond. But, prior to that, I would just like to say to Commissioner Clyburn, congratulations on the reform of the inmate calling services. This will help to mitigate a lot of the hardship millions of families across our Nation have faced in dealing with that service.

But I would like to ask, do you see the FCC's revamped designated-entity rules as sufficient enough to create opportunities for minority spectrum ownership? And what can the FCC do to enhance and incentivize secondary market transactions that have the potential to drive more diversity in minority ownership of commercial wireless spectrum?

I was directing that to you, Commissioner Clyburn.

Ms. CLYBURN. OK. Thank you very much. I appreciate it.

A number of things that we have done in the past year and a half or so, I think, will stimulate the marketplace and the ecosystem.

We repealed the attributable material relationship rule and the former defaulter rule because we recognize that, while well-intentioned, they were keeping businesses, particularly diverse businesses, out of the market.

We also adopted a rural bidding credit, which will give more incentive to those in those particular areas, which is a twofer. It would, you know, stimulate more deployment in those particular areas, and it would allow for more opportunities in a smaller footprint.

We also are looking at small-business incentives, bidding credits, that, again, would stimulate that type of investment and opportunities.

And, of course, we are always looking for ways to stimulate secondary-market transactions. Again, a smaller footprint, in some cases, and a more laser-beam focus.

And so we are looking at and continuing conversations with those who have great ideas to really do what we can to diversify the ecosystem for businesses of all sizes and businessowners from all backgrounds.

Ms. CLARKE. Thank you. That is encouraging. We want to definitely stay focused on that. There have been some substantial losses, particularly in black communities, over the years, and we would like to see opportunities particularly for young, more inspired businessowners and entrepreneurs to really gain a foothold in this market.

Shifting gears a bit, the FCC appears to have been focused on expanding online video platforms, but there still appears to be challenges in getting the content directly to the consumer, as evidenced in the current AllVid debate.

So I want to drill down just a little bit and ask Chairman Wheeler: The proposal made by the AllVid proponents in your DSTAC proceedings requires a new box just to get the MVPD content to the new retail device. Instead of getting rid of boxes, AllVid re-

quires an additional box. And I think you have heard colleagues commenting on this this morning.

This is a concern on two fronts for consumers, increased box costs and increased energy costs, in addition to no guarantee of consumer protection. This seems out of step with today's marketplace.

Aren't these increased costs and diminished consumer protections a concern for the FCC, as well?

Mr. WHEELER. Thank you, Congresswoman.

There has been a lot of talk today about AllVid, which is a half-dozen years old and apparently somebody has wanted to resurrect.

We have just finished a comment period on the DSTAC requirement that was in STELA. It was finished last week. The making of conclusions from that is premature.

We believe that section 629 says to us that we have the responsibility to assure that there is competitive choice in terms of navigation devices. DSTAC had several approaches as to how to do that. The decision about where you go from there is one that we have not yet made because the comments just closed last week.

Ms. CLARKE. Well, let me just say this. I think it is clear that we need to monitor this very closely. Because there is no doubt, if two devices are needed, there is going to be an increase in energy costs. There is no doubt about that.

Mr. WHEELER. It is also possible there could be no devices needed and there would be a reduction in cost. I mean, that is the interesting thing that we have to—

Mr. LATTA. And I am sorry to have to cut the Chairman off. We have—

Ms. CLARKE. Yes. No problem. I yield back, Mr. Chairman.

Mr. LATTA [continuing]. About 7 minutes left on the roll here.

And the chair now recognizes the gentleman from New York for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman. I guess we will see if I can be a little bit brief.

Mr. Wheeler, at the end of July, in this hearing room, I asked you about pirate radio. I am a New Yorker. That is a big issue certainly down State, even though I am from the Buffalo area. And I did send you a letter signed by the entire New York delegation—

Mr. WHEELER. Yes, sir.

Mr. COLLINS [continuing]. And most of the New Jersey delegation, including Ranking Member Pallone.

But, since then, I have continued to be disappointed. There have only been, as I understand it, five or six fines issued related to pirate radio. And it is such a small number, it is certainly the feeling within the industry that that has done nothing to address the serious issue, that we consider a serious issue, of the multiple pirate radio operators that continue to operate in the New York metropolitan area.

So, you know, my contention is, you know, to be very direct, that you have paid this lip service and, frankly, little more than lip service. You know, you decimated the Enforcement Bureau. You have closed offices and eliminated field engineers in an effort you call consolidation. But I can tell you, coming from the business sec-

tor, and I do understand consolidation, you need results to go with it, and, in this case, there have been few to no results.

So my staff called your Enforcement Bureau and said, "Can you give us an update on what is going on with pirate radio and the enforcement efforts?"—directly to your Enforcement Bureau. I don't know if you will be surprised to hear this. Their comment was, "We are not handling that. You will have to call Mr. Wheeler's personal office to find out what is being done on pirate radio."

My perspective? That is an embarrassing runaround, disrespectful to my office for sure, that your Enforcement Bureau says, "We are not doing anything."

Mr. WHEELER. I agree with you, sir.

Mr. COLLINS. So I would like you and would ask you to get back to us—

Mr. WHEELER. Yes, sir.

Mr. COLLINS [continuing]. In particular to my staff, who came off of that phone call and you can imagine the comments that they made about what we consider to be lip service to pirate radio. And if nothing else, if that is all it is, tell us that is all it is. But I would very much appreciate not having to wait months to get a response on this, because I found that unbelievable, frankly.

Mr. WHEELER. So do I.

Mr. COLLINS. Well, good. So I will look—

Mr. WHEELER. Because the reality is, as I said in my statement, Congressman, there have been 280 enforcement actions that we have taken in the last 2 years under my chairmanship. And we have a joint task force that we are working with the NAB on this.

And I suggested in my testimony that there were also some additional steps that Congress could take to help us deal with the landlords, because they are the ones who are facilitating this. And the pirate radio folks, you shut them down, they thumb their nose at you, and they go someplace else.

Mr. COLLINS. No, we understand that piece. But we were quite frustrated by the—

Mr. WHEELER. I would be, too.

Mr. COLLINS [continuing]. Very direct response—

Mr. WHEELER. I would be, too.

Mr. COLLINS. So we will just jointly dig to the bottom.

Mr. WHEELER. We will fix that.

Mr. COLLINS. Now, the other thing—and I reach out to the industry and ask them to help me with some questions. I am sitting here at the bottom of the dais, and, usually, by the time, 30 other questions are asked. And I will tell you, what came back from me asking them to ask you was really a frustration they see right now in the investment side, actions that are a wet blanket and really having a negative impact on investments.

But they also pointed out, from their perspective—and I don't know whether this is a rhetorical comment or asking a question, but—what they see from the FCC as selective enforcement on the TTY issue, spectrum set-asides for companies who are not participating in the auctions, and onerous regulations extended to new technologies like streaming video that do nothing but discourage investments.



Mr. WHEELER. Thank you for asking. Let me see if I can tick them off real fast.

Mr. COLLINS. All right.

Mr. WHEELER. TTY. It is really interesting. AT&T asked for a waiver. We granted them the waiver. We called them and said, "We are going to grant you the waiver."

They followed the next day with a letter saying, "Why haven't you granted us the waiver? And, by the way, what about our competitors on this?"

We went back to them, and we said, "Would you file a complaint so we can see if it is appropriate to take enforcement?"

Mr. COLLINS. I am about to run out of time.

Mr. WHEELER. They didn't want us to do that.

And, secondly, on over-the-top, we have started a rulemaking on that. The purpose of rulemakings is to learn. We learned the vast number of things that are developing very rapidly. And we have not moved forward on that notice of proposed rulemaking. And I don't see, until the situation changes, that we would.

And I forget your third.

Mr. COLLINS. That is OK. My time has expired.

Mr. LATTA. The gentleman's time has expired.

Mr. COLLINS. And I do look forward to catching up with you on the enforcement piece. Thank you.

Mr. LATTA. The chair now recognizes the gentleman from Illinois for 5 minutes.

Mr. RUSH. I want to thank you, Mr. Chairman.

And I also want to commend the Commission and Commissioner Clyburn, in particular, for the capping on the predatory phone rates for our inmates across the country.

But I wanted to ask the Commission in general, I want to raise a question and raise an issue that is affecting my city, Chicago, other urban areas all across the Nation, and this is on the issue of urban violence.

There have been 2,587 shootings and 435 murders in Chicago so far this year—more than L.A. And New York City combined. And it is well-known that these gang leaders who are primarily perpetrating this violence, that they are using social media to advance their agendas and their conflicts.

Knowing that the FCC has limited jurisdiction over Facebook, Twitter, and Instagram, is there anything within the realm of public safety that the FCC can use to help address and curtail this violence? Can and will the FCC add its important voice, its stature, to this dynamic discussion?

Mr. WHEELER. Mr. Rush, the situation that you describe is, as you say, tragic. It is not dissimilar to what Mr. Barton raised a moment ago with regard to terrorist threats and terrorists using social media.

We do not have jurisdiction over Facebook and all the other edge providers. We do not intend to assert jurisdiction over them. And I don't believe that they are—as legitimate as your concern is, I don't believe that we have the jurisdiction to do the kind of thing that you suggest.

Mr. RUSH. That means that you don't think that the FCC could weigh in on this in any way?

Mr. WHEELER. I am happy to use the bully pulpit. I am happy to talk to Mark Zuckerberg and others to raise this issue and to say, hey, this is important kind of thing, we need to be in this together. But we don't have regulatory authority.

Mr. RUSH. I am not seeking regulatory.

Mr. WHEELER. OK.

Mr. RUSH. I would grant you that I don't believe that you have jurisdiction. But I think that there is a bully pulpit, that you and others may be able to address this issue. I am not trying—I don't want to—

Mr. WHEELER. I will call Mark Zuckerberg this afternoon to raise the issue that you have raised and the issue that Mr. Barton has raised. And I am sure that he is concerned about it, as well, and he will have some thoughts.

Mr. RUSH. Thank you.

Ms. CLYBURN. Right quickly, sir. Good to see you. And thank you for the acknowledgement.

One thing that we are acting on and working with law enforcement and other authorities are stolen phones, as people are still using throwaway phones and burner phones or whatever you want to call them to commit crimes. We are continuing to work—our Consumer and Government Affairs Bureau is working with our sister agencies and then, like I said, law enforcement authorities and mayors across this Nation to address that issue. So where we can, we will.

Mr. RUSH. Thank you.

Does any other Commissioner have anything to offer?

Mr. PAI. Congressman, this doesn't directly relate to social media, but one of the things that I was disturbed to find when I visited a maximum-security prison in Georgia recently was that the use of contraband cell phones is having a direct and severe effect on people outside of prisons. I heard about family members, witnesses, and others, crime victims, who, because of the use of contraband cell phones in prison, have faced threats, including to their very lives.

And I think that is something where the agency, a couple of years ago, teed up a number of different ideas. And I think it would be appropriate for the agency to come to closure on that to help protect some of these people, disproportionately minority, who are getting, some killed or robbed or otherwise threatened by use of this technology.

Mr. RUSH. Thank you, Mr. Chairman. I yield back.

Mr. LATTA. Thank you very much.

The gentleman yields back.

Just to let everyone know, we are about 18 minutes into this vote, with about 230 that haven't voted.

And the chair recognizes the gentleman from Florida.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I will be as brief as I possibly can.

Thank you for the Commissioners' testimony today. I really appreciate it so much.

Chairman Wheeler, as part of the Enforcement Bureau's ongoing work, it is my understanding that there has been a letter of inquiry, or LOI, seeking information from a hotel chain on all of the

properties from, again, its name, the name of the hotel chain—including franchises, over which it may not have any legal authority.

To your knowledge, does the Enforcement Bureau have any reason to believe there are violations of the Commission's rules at these facilities? That is the first question.

Mr. WHEELER. Thank you, Congressman.

Typically, an LOI, a letter of inquiry, is sent when there is a belief that this is and they are seeking information to find out whether that belief is factual.

Mr. BILIRAKIS. Based on the size of the request—again, all the properties—the cost to the hotel and loss of productivity and wages would seem to be quite high, I am sure you will agree, given the technical nature of the request, without any notion that this fishing expedition will bear fruit for consumers.

Isn't this exactly the kind of thing that a cost basis analysis would prevent from being unnecessarily imposed on, again, American job creators? Would you agree with that?

Mr. WHEELER. Thank you.

There have been multiple actions that we have brought against hotel chains because what they have been doing is jamming the signals of people like you and me in order—

Mr. BILIRAKIS. You are sure of that? You are certain of that?

Mr. WHEELER. I am certain we have brought these actions and that is what was going on and that what has happened is that they have been forcing people to buy services from them instead of using the licensed services that we have authorized. And section 333 of the act says that we have a responsibility to protect the licensed services that we authorize. And—

Mr. BILIRAKIS. And it specifically states that in the act—

Mr. WHEELER. Yes, sir.

Mr. BILIRAKIS [continuing]. With regard to WiFi. Is that correct?

Mr. WHEELER. It is an appropriate service of the agency.

And so I am unfamiliar with exactly the specifics that you are talking about here, but if there is a letter of inquiry that was sent out, I would imagine that there have been some indications of difficulties and WiFi access being blocked in contravention of the law.

Mr. BILIRAKIS. You are assuming that. OK. Thank you.

Commissioner Pai, there has been some renewed attention to the TCPA this summer. The FCC recently passed a package of declaratory orders, but I fear they didn't impose real reforms to actually stop unwanted calls or help on this. And maybe it would cause unnecessary litigation.

A statement from the Chairman about telephone townhalls had been quickly corrected after our last oversight hearing, within a few hours, I understand. I have a different question this time for this hearing.

We talked about apps for customer relationship management and whether a smartphone is or can be an autodialer under the FCC's majority's interpretation. There are many small businesses in America, in my district as well, that rely on smartphones to run their businesses.

I have a few questions. Yes-or-no answers would be greatly appreciated.

Mr. PAI. Sure.

Mr. BILIRAKIS. If a small business owner has a smartphone and uses one of those apps, has that person violated the TCPA, in your opinion?

Mr. PAI. Yes, according to the majority.

Mr. BILIRAKIS. Could that person be subject to FCC enforcement action even for a misdial?

Mr. PAI. Yes.

Mr. BILIRAKIS. Unbelievable.

Would that person be subject to the private right of action provided under the TCPA?

Mr. PAI. Yes.

Mr. BILIRAKIS. OK.

Commissioner Rosenworcel, is this a result that you support?

Ms. ROSENWORCEL. Well, let me be clear. I don't like robocalls, and I think most people are not fond of them. So I think we should take any and all actions we can to prevent them, because those unwanted calls are not something that people are all that eager to receive.

Mr. BILIRAKIS. However, we are not accomplishing our goal—

Ms. ROSENWORCEL. No, but let me speak to you exactly to what you were talking about with autodialers.

The Telephone Consumer Protection Act was passed in 1991. In 1991, an autodialer was a big, bulky piece of equipment. One of our challenges today is that we have to still use that law when we have software that can accomplish what that hardware did decades ago.

And so I think the struggle that the agency has is trying to figure out how to manage with a statute that didn't contemplate the digital world we live in today.

Mr. BILIRAKIS. OK. Let me ask you again. Do you—

Mr. LATTA. I am sorry. The—

Mr. BILIRAKIS. OK. Yes, we have to go.

Mr. LATTA [continuing]. Gentleman's time has expired.

Mr. BILIRAKIS. All right. I am going to submit something for the record.

[The statement of Mr. Bilirakis follows:]

#### PREPARED STATEMENT OF HON. GUS M. BILIRAKIS

I would like to register my disappointment in your October 22 order limiting the ability for jails to collect commissions on inmate phone calls. We've exchanged letters on this issue this year, and law enforcement officials in my district, like Sherriff Chris Nocco from Pasco County, continually inform me how important these fees are to their operations.

Services like GED programs, parenting classes and industry certification training programs are solely funded by these fees, and now are at risk of termination.

While it's on questionable legal grounds that the FCC can even regulate intrastate rates charged by payphone service providers in the first place, the practical result of this order will cap rates in aggregate so that revenues won't cover expenses at all.

Reintegration services will disappear, and that's a shame.

Thank you and I yield back.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Mr. LATTA. Thank you very much.

And the chair recognizes the ranking member.

Ms. ESHOO. Thank you, Mr. Chairman.

Just very quickly, two things.

Thank you to all of the Commissioners. I have some more questions. I will put them in writing.

Commissioner Clyburn, I didn't get to say earlier, thank you for your work on Lifeline. Thank you. It is really helping to make a difference.

And to Commissioners O'Rielly and Pai, I hope that I didn't hear you siding with people that rip off consumers. Any outfit that is going to place charges on a consumer's bill and bilk them, I don't think that is the place where anybody wants to stand. Now, maybe you have some other issues with the enforcement part of the agency. But that is not only the wrong side, it is the wrong side of history.

Mr. Chairman, I would like to ask for a point of clarification on the introduction of multimedia during our hearings. Earlier in our hearing today, one of our colleagues introduced a video as part of her line of questioning without asking for objection. As you know, when letters or other written materials are entered into our record, we first have to ask for unanimous consent.

The Democrats on the committee had previously sent a letter to our Republican colleagues asking them, when video or other multimedia evidence is introduced, that we first check with our colleagues on the other side. Now, she may not have known that that request should have been made.

And I think, for regular order here, no side ever wants to be surprised. So I ask——

Mr. LATTA. If I could——

Ms. ESHOO. But let me just ask the parliamentarian the following——

Mr. LATTA. Well, just if I could, to the ranking member, because of the interest of time and we are going to miss the vote, if we could ask our staffs to work together on your question.

Ms. ESHOO. Yes, but let me put my question——

Mr. LATTA. OK.

Ms. ESHOO [continuing]. Out there so it is a part of the record.

It is a parliamentary inquiry, and it is the following: Can you provide some clarification as to whether video and multimedia evidence will be treated the same as written materials as a matter of this subcommittee's process?

And we will await the——

Mr. LATTA. We will work with our staff.

Ms. ESHOO. Yes. Not the staff, the parliamentarian.

Mr. LATTA. OK. Thank you.

Ms. ESHOO. Thank you, Mr. Chairman.

Mr. LATTA. And if I could real quickly just, again, thank the Commission for being with us today. On behalf of the chairman of the subcommittee and also the ranking, we thank you for your time.

And, without any other questions coming before us, we stand adjourned.

Ms. ESHOO. Thank you.

[Whereupon, at 1:25 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



**BILL HASLAM**  
GOVERNOR  
STATE OF TENNESSEE

November 13, 2015

Representative Greg Walden  
Chairman, House Subcommittee on Communication and Technology  
U.S. House of Representatives  
2185 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Walden,

I understand that the Communications and Technology Subcommittee of the House Energy and Commerce Committee will be conducting oversight hearings on November 17 that will include an evaluation of recent Federal Communications Commission (FCC) actions on broadband that I believe represent a clear overreach by the federal government.

As I stated in my February 6, 2015 letter to FCC Chairman Tom Wheeler, I share the goal of encouraging investment of broadband. However, I firmly believe that these types of decisions are best made at the state level and that states have a strong interest in overseeing the process for broadband approval and deployment.

I strongly disagree with the approach that has been taken and would respectfully ask the subcommittee to consider appropriate action to reinstate and further protect the rights of states in this matter.

Thank you for your service and commitment on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Haslam".

Bill Haslam  
Governor

cc: Rep. Fred Upton, Chairman, House Energy and Commerce Committee  
Rep. Marsha Blackburn, Vice Chairman, House Energy and Commerce Committee

STATE OF TENNESSEE

Office of the Attorney General



HERBERT H. SLATERY III  
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202  
TELEPHONE (615)741-3491  
FACSIMILE (615)741-2009

November 12, 2015

Representative Greg Walden  
Chairman House Subcommittee on Communication and Technology  
U.S. House of Representatives  
2185 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Walden,

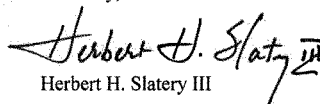
It has come to our attention that the Communication and Technology Subcommittee of the House Energy and Commerce Committee will conduct an oversight hearing on November 17, 2015, with the Federal Communications Commission (FCC).

As the Committee evaluates the circumstances surrounding the FCC's decision to circumvent State law in issuing its Memorandum and Order dated March 12, 2015 in the Matter of the Electric Power Board of Chattanooga, Tennessee (EPB), I ask the Committee to consider the arguments detailed in the Brief of Petitioner (State of Tennessee) filed with the U.S. Court of Appeals for the Sixth Circuit on September 18, 2015 by my office on behalf of the State of Tennessee.

As I further stated in my letter to Ms. Marlene H. Dortch, FCC's Secretary, dated February 5, 2015, the FCC did not have the authority to grant EPB's petition to have its territorial scope of operations expanded outside the limitations set forth by existing State law. The FCC's order granting EPB's petition attempts to preempt State law and is a clear challenge to State sovereignty.

While increasing the availability of broadband is a laudable policy objective, it should not come at the expense of nullifying legitimate State regulation of an entity the State authorized. We appreciate the Committee reviewing this Order and we encourage the Committee to take whatever corrective action is necessary to preserve the State's authority in this matter.

Sincerely,

  
Herbert H. Slatery III

**Congress of the United States**  
**Washington, DC 20515**

June 18, 2015

The Honorable Tom Wheeler  
 Chairman  
 Federal Communications Commission  
 445 12th Street, SW  
 Washington, D.C. 20554

Dear Chairman Wheeler:

Last year, as part of the STELA Reauthorization Act (STELAR), Congress directed you as Chairman to establish a Working Group that would examine technical issues and make recommendations on a software-based downloadable security system for securing video content. We are pleased that you chartered the Working Group, now called the Downloadable Security Technical Advisory Committee (DSTAC), in a timely manner, as the statute directs.

Unfortunately, we have become increasingly concerned that DSTAC is not following its original congressionally defined purpose. The limited scope of the DSTAC's mission is clear. It is:

“to identify, report, and recommend performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform, and technology- and platform-neutral software-based *downloadable security system* designed to promote the competitive availability of navigation devices in furtherance of section 629 of the Communications Act of 1934 (47 U.S.C. 549).” (emphasis added).

The authorizing language referenced above was thoroughly debated by Congress. It was the subject of numerous discussions involving alternative approaches some of which would have authorized a broader mission for DSTAC. In the end, both the House and Senate unanimously adopted this language which instructs the Commission to carry out a limited and focused mission.

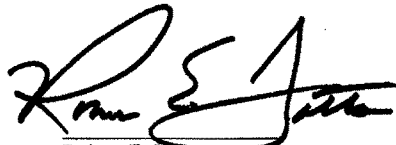
Some group participants and directives issued by your staff, unfortunately, are ignoring the qualifying statutory language regarding downloadable security in order to resurrect a previously discredited proposal referred to as AllVid. These proposals and staff directives go well beyond security issues, and in fact, seek to force providers to dismantle their video services and content for others' commercial exploitation, harming the video marketplace and interfering with contracts and copyright law in the process. Such a controversial approach was suggested by the Commission in 2010, but was never pursued by the Commission or advanced by Congress. Its resurrection would not only be an enormous distraction, but more significantly, would also plainly go beyond the limited statutory mission assigned to DSTAC. For a committee convened under the rules of the Federal Advisory Committee Act, agencies are expected to follow procedures “to assure that the advice or recommendations of advisory committees will not be




inappropriately influenced by the appointing authority or by any special interest.” Encouraging DSTAC to divert from its statutory mission—which Commission staff has consistently done through the issuance of guidance and directives—is not consistent with agency neutrality and inappropriately distracts participants’ time and energies on extraneous matters that threaten to undermine the quality of the inquiry.

We urge the Commission to follow the clear statutory language set in STELAR and ensure that DSTAC’s inquiry and report do not go beyond the bounds of the statute. To do otherwise would be directly contrary to the direction Congress gave you in STELAR, would be inconsistent with the clear intent of Congress, and would raise questions about your willingness to follow Congressional mandates.

Sincerely,

  
 Robert E. Latta  
 Member of Congress

  
 Gene Green  
 Member of Congress



ILLINOIS CHAMBER  
OF COMMERCE

November 12, 2015

The Honorable Adam Kinzinger  
1221 Longworth HOB  
Washington DC 20515

Dear Representative Kinzinger:


On November 17<sup>th</sup>, the House Energy & Commerce Subcommittee on Communications and Technology has scheduled a hearing on the "Oversight of the Federal Communications Commission". As a statewide organization that represents nearly 3,000 Illinois businesses from all sectors of our economy, we are writing to express the need for the FCC to encourage a regulatory approach that fosters investment and innovation necessary in order to ensure the deployment of new technology and global competition.

In order to achieve this goal, the Illinois Chamber believes that in this ever evolving and rapidly changing business environment it is critical that the FCC maintain a light regulatory touch. Technological advances have dramatically changed the industry resulting in outdated regulations which are often counterproductive and result in significant red tape. By maintaining a light regulatory touch, the FCC will promote innovation, spur competition and drive investments that build out new networks and services to businesses and consumers. This infrastructure and innovation is what business needs to grow and be successful.

An FCC which overreaches can quickly become a weight that very quickly places American companies at a competitive disadvantage from better supported global competitors. For example, in the past the FCC has approached the Internet with a flexible and open policy allowing for growth and development. However, under the Obama administration the FCC now wants to move backward from this successful policy instead turning to failed policies of the old monopoly telephone system. This simply goes too far. We would recommend policies which have the right regulatory balance furthering broadband deployment to all areas of the state and resulting in driving a globally competitive and healthy economy.

This commonsense approach will have a positive impact on our economy today and in the years to come. In your upcoming subcommittee hearing, we would request that you consider these points as you formulate questions for the hearing. This is an incredibly exciting time in telecommunications and the powerful tools it provides American business, please express to the FCC this dynamic and their important role in overseeing this ever changing environment.

Sincerely,

A handwritten signature in black ink that reads "Todd C. Maisch". The signature is written in a cursive, slightly slanted style.

Todd Maisch  
President and CEO

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (201) 225-2927  
Minority (202) 225-3641

January 14, 2016

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Dear Chairman Wheeler:

Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, November 17, 2015, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Thursday, January 28, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Greg.Watson@mail.house.gov](mailto:Greg.Watson@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,  
  
Greg Walden  
Chairman  
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment



Office of the Director

**Federal Communications Commission  
Office of Legislative Affairs  
Washington, D.C. 20554**

February 19, 2015

The Honorable Greg Walden  
Chairman  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Walden:

Enclosed please find responses to Questions for the Record submitted for Chairman Tom Wheeler regarding his appearance before the Subcommittee on Communications and Technology on November 17, 2015, at the hearing entitled "Oversight of the Federal Communications Commission."

If you have further questions, please contact me at [REDACTED].

Sincerely,

[REDACTED]

Michael Dabbs  
Director

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Enclosures

## Attachment - Additional Questions for the Record

The Honorable Greg Walden

1. In the Open Internet proceeding, the Paperwork Reduction Act analysis that the Commission submitted estimated the total annual cost for all respondents to comply with the new rules would be \$640,000. However, as commenters pointed out, this relies on an assumption of an average hourly wage of \$6.95. Can you explain how the Commission came to this number? Include in the explanation all calculations performed and identify the source of any data relied upon.

**Response:** The initial Paperwork Reduction Act (PRA) analysis includes two separate estimates for the cost of compliance: (1) capital expenditures and (2) "in-house" labor costs. These estimates reflect two separate portions of the cost of compliance.

The \$640,000 figure is the initial estimate of capital costs that could be incurred by a few large wireline providers who choose to launch their own measurement programs. Because it is an estimated capital expenditure, the \$640,000 figure is not a part of the wage analysis in the PRA estimate.

Separate from and in addition to that estimate of capital costs, the initial PRA analysis estimated a total burden of 92,133 hours, with underlying "in-house" compliance costs per respondent based on hourly wage rates comparable to mid- to senior-level federal employees (GS 12/5, 14/5, and 15/5).

The Commission sought public comment on its initial PRA estimate and is currently reviewing the filed comments.

2. On November 4, 2015 you submitted a letter to the Committee describing the status of your efforts on FCC process reform. With respect to the recommendations made by the Staff Working Group, you indicated that you are "working on implementing these recommendations ... and significant progress has been made."
  - a. Identify the recommendations made by the Staff Working Group that are being implemented.
  - b. Identify the recommendations that are not being implemented.

**Response:** The Commission has made substantial progress in implementing the report's recommendations. Of the 154 Staff Working Group recommendations listed in the report, we have implemented 77. In addition, five of the recommendations have been substantially implemented. Work on another 68 is ongoing and indeed for most of these significant progress has been made. There are only four recommendations for which work has not yet been initiated,

and we provide the reasons below. It's important to note that even for those recommendations which we have categorized as "implemented" or "substantially implemented" below, we intend to continue to work on these topics and achieve more efficiencies and streamlining in the future.

As you are aware, the Commission requested additional funds for some reform projects, especially with regard to our Information Technology operations. In certain cases, the funds have been denied; where possible, to address funding shortfalls, we have done our best to use funds as efficiently as possible, and obtained reprogramming authority in some cases to initiate the projects. The server 'lift and shift' is a good example of our flexibility in re-assigning funds to mission-critical objectives.

The chart below specifically answers your directive that we identify each specific recommendation and its status.

<b>Recommendation #</b>	<b>Recommendation Title</b>	<b>Implementation Status</b>
1.02	Review Transaction Shot-Clock Procedures	Implemented
1.07	Ensure Transparency of FCC Budgetary and Administrative Information on the FCC's Website	Implemented
1.08	Post Logs Providing the Status of Pending FOIA Requests	Implemented
1.10	Make FCC FOIA reports Easily Accessible on FCC.gov	Implemented
1.11	Develop Sub-Delegation Plans for Bureaus and Offices	Implemented
1.13	Establish Comprehensive Guidelines for Inter-Bureau Coordination and Review	Implemented
1.14	Work with NTIA to Ensure Smooth FCC-NTIA Coordination Process	Implemented
1.16	Require Use of Standard Templates and Boilerplate Language for Commission Documents, Where Appropriate, and Issue "Best Practices" to Facilitate Drafting and Release	Implemented
1.17	Develop "Best Practices" for Summary Disposition of Commission Proceedings Where Appropriate	Implemented

1.19	Develop an FCC Style Manual	Implemented
1.22	Identify Opportunities for Summary Disposition of Routine Items	Implemented
1.25	Bureau and Office Backlog Reduction Plans to Speed Processing and Eliminate Backlogs	Implemented
2.01	Eliminate Paper Copies of Items and Related Materials Circulated Internally	Implemented
2.02	Eliminate or Reduce Paper Releases	Implemented
2.03	Streamline Release Procedures	Implemented
2.04	Update Existing Templates and Re-Evaluate Style Requirements	Implemented
2.05	Update Release Formats	Implemented
2.10	Automate Password Resets for CORES	Implemented
2.14	Expedite the Treatment of Complaints	Implemented
2.15	Re-Focus CGB's Handling of Informal Consumer Complaints	Implemented
2.16	Improve the Consumer Experience and Clarify Expectations When Filing Informal Complaints	Implemented
2.17	Provide a Quick, Easy Single Interface for Consumers to File Complaints and Encourage Web-Based Submission of Complaints	Implemented
2.18	Provide Better Guidance to Consumers Regarding Milestones of the Complaint Process	Implemented
2.19	Give Consumers the Means to Check the Status of Their Complaints and Rate the Response	Implemented
2.21	Improve Responses to Complaints	Implemented
2.22	Improve Tracking and Analysis of Complaint Data for Internal Commission Use	Implemented



2.24	Reevaluate PRA Resource Allocation	Implemented
2.25	Update Existing PRA Guidance	Implemented
2.26	Improve Inter-Agency PRA Coordination	Implemented
2.29	Consult OCBO Earlier in the RFA Compliance Process	Implemented
2.3	Update Existing RFA Guidance	Implemented
2.32	Amend Commission Formatting and Style to Reflect Federal Register Requirements and Update Guidance	Implemented
2.33	Designate Federal Register Liaisons	Implemented
2.34	Automate Publication Notice	Implemented
2.35	Investigate and Pursue Paperless Options	Implemented
3.07	Ensure Timely Policy Cuts	Implemented
3.10	Adopt Policies for Minimum Comment Periods for Significant FCC Regulatory Actions, Including Rulemakings	Implemented
3.14	Obtain Economic, Technical and Enforcement Input Early in Rulemakings	Implemented
4.02	Define and Communicate the Commission's Goals and Priorities to Staff	Implemented
4.05	Expand Regular Events to Keep Staff Informed	Implemented
4.06	Post Agency-Wide Information on the Intranet Instead of Disseminating by Email	Implemented
4.10	Planning for and Funding Travel	Implemented
4.11	Enhance FCC University	Implemented
4.12	Reassess Strategies for Staff Training and Development Overall Including the Need for Additional Training Resources	Implemented
4.13	Increase Training in the Use of Technology and Project Management Tools	Implemented

4.15	Actively Encourage and Facilitate Continual Staff Education	Implemented
4.17	In Progress IT Projects	Implemented
4.18	Re-baseline the FCC's IT Budget and Improve Procurement	Implemented
4.19	Improve WebTA Reporting	Implemented
4.25	Improve Web Site Search Functionality	Implemented
4.26	Implement a Consistent Design for FCC Web Presence	Implemented
4.27	Improve Bureau and Office Webpages and Update the fcc.gov Information Strategy	Implemented
5.03	Consider Notifying Investigation Subjects of Closure	Implemented
5.04	Reevaluate Case Selection Criteria to Maximize Enforcement Impact	Implemented
5.07	Eliminate the Requirement for Prior Approval of Pro Forma Changes in Ownership of Space and Earth Station Licensees	Implemented
5.08	Improve the ITU Notification Process	Implemented
5.12	Publish Explanatory Materials on Satellite Licensing	Implemented
5.15	Expedite Media Bureau Licensing Processes	Implemented
5.17	Increase Automation of License Processing and Review	Implemented
5.18	Create an Electronic Filing System for Network Change Notifications	Implemented
5.20	Establish Procedures to Better Detect and Address Noncompliant Ex Parte Filings in a Timely Manner	Implemented
5.22	Prepare Streamlined Responses to Fee Related Requests	Implemented
5.24	De Minimis Collection Requirement for Regulatory Fees	Implemented

5.25	Complete the Legislative Tracking System Development Effort	Implemented
5.26	Improve Coordination on Economic Policy Across Bureaus and Offices	Implemented
5.27	Consider Updating Forfeiture Guidelines	Implemented
5.28	Consider Changes to the Two-Degree Spacing Policy	Implemented
5.29	Continue to Examine Part 25 Rules to Streamline Information Filing Requirements	Implemented
5.3	Extend the Closing Deadline for Certain International Assignments and Transfers of Control	Implemented
5.32	Update Tower and Lighting Requirements to Address Changed Circumstances	Implemented
5.35	Reform Licensing of 800 MHz Cellular Services	Implemented
5.39	Parties Aggrieved by a USAC Decision Must Seek Review From USAC Before Seeking Review From the FCC	Implemented
5.43	Propose Rule and Procedure Changes to Facilitate More Streamlined Review of Routine Subpoenas, or Eliminate the Requirement for OGC Review of Routine Subpoenas	Implemented
5.45	Evaluate Whether Legislative Changes to Enhance the Commission's Enforcement Powers Are Needed	Implemented (Technical assistance provided to congressional staff related to reauthorization measures.)
5.46	Eliminate the ORBIT Act Report	Implemented (Technical Assistance provided House and Senate staff

		on consolidated reporting leading to Section 3(a) of S. 253 and H.R. 734.)
5.47	Eliminate the International Broadband Data Report	Implemented (Technical Assistance provided House and Senate staff on consolidated reporting leading to Section 3(c) of S. 253 and H.R. 734.)
5.48	Modify the Reporting Requirements for the Video Competition Report and Cable Price Survey	Implemented (Technical Assistance provided House and Senate staff on consolidated reporting leading to Section 3(d)-(e) of S. 253 and H.R. 734.)
2.09	Determine Additional Categories for Auto-Processing	Substantially Implemented (IT budget constraint)
2.20	Automate the Processing of Informal Consumer Complaints	Substantially Implemented
2.27	Update PRA Approval and Recordkeeping Mechanisms	Substantially Implemented
2.31	Investigate Ways to Streamline and Shorten Federal Register Summaries	Substantially Implemented
3.08	Include Proposed Rules in NPRMs Whenever Possible, and Draft Proposed and Final Rules Early in the Process of Developing Decisional Documents	Substantially Implemented
1.01	Efficient Analysis and Relevant Timelines	Ongoing

1.03	Ensure Accountability for Timely Decision-making	Ongoing
1.04	Make Information on ALL Petitions and Open Dockets Publicly Available and Searchable	Ongoing
1.05	Make Status Information on Circulation Items Publicly Available	Ongoing
1.06	Enhance Transparency of All Unpublished Filings	Ongoing
1.09	Post All FOIA Decisions, Including Released Documents	Ongoing
1.12	Streamline Management Review	Ongoing
1.15	Seek to Establish Firm Timeframes for Executive Branch Review of Foreign Ownership Issues	Ongoing
1.18	Consider Expanding the Categories of Transactions or Other Matters That Qualify for Streamlined Treatment	Ongoing
1.20	Enhance Tracking of Incoming and Backlogged Items to Allow Greater Accountability	Ongoing (IT budget constraint)
1.21	Increase Tracking Transparency of Pending Items	Ongoing (IT budget constraint)
1.23	Review and Update Commission's Procedural Rules	Ongoing
1.24	Encourage Outside Parties to Submit Proposed Text for FCC Documents Where Appropriate	Ongoing
2.06	Communications With Licensees	Ongoing
2.07	Communications with the Public	Ongoing
2.08	Electronic License Processing	Ongoing (IT budget constraint)
2.11	Explore Standardizing License Formats	Ongoing
2.12	Explore Making the Application Fee Structure More Consistent and Equitable	Ongoing

2.13	Explore Using Third Party Resources for More Licensing Functions	Ongoing
2.23	Make Data More Accessible and Transparent to the Public	Ongoing
2.28	Focus Information Collected to Comply with the PRA	Ongoing
2.36	Adopt Procedures to Ensure FCC Staff Actions to Effectuate Federal Register Publication Are Timely	Ongoing
3.01	Consider Expanding Use of Multi-Stakeholder Mechanisms	Ongoing
3.01.1	Identify Independent Multi-Stakeholder Bodies With Relevance to the Commission's Work	Ongoing
3.01.2	Evaluate Suitability and Feasibility of Conducting Multi-Stakeholder Pilot Program(s) to Narrow Issues in an Ongoing Proceeding	Ongoing
3.02	Refine Focus of Current Advisory Committees to Enhance the Relevance of Their Work	Ongoing
3.04	Consider Additional Mediation and/or Other Dispute Resolution Techniques to Narrow Issues in Controversy and Find Solutions	Ongoing
3.06	Continue to Engage with Other Agencies to Develop Best Practices for Rulemakings	Ongoing
3.09	Draft Shorter Decisional Documents Where Possible	Ongoing
3.11	Include Performance Measures for Evaluating the Effectiveness of Major Program Activities	Ongoing
3.13	Focus Comment Rounds in Large Dockets	Ongoing
3.15	Commit to Review Rules Periodically	Ongoing
4.01	Enhance Availability of Current Information on Staff Expertise	Ongoing

4.03	Provide Enhanced Opportunities for Staff to Share Knowledge, and Develop and Expand Relevant Professional Expertise	Ongoing
4.04	Publicize and Expand FCC Wiki	Ongoing
4.07	Promote and Require Individual Accountability for Work Performance and Meaningful Feedback	Ongoing
4.08	Continue to Recognize Outstanding Performance and Significant Contributions by the FCC Staff	Ongoing
4.09	Revisit External and Internal Hiring Strategies	Ongoing
4.14	Reassess the FCC's Approach to Management Training and Development	Ongoing
4.16	Explore Ways to Provide Additional On-the-Job Training	Ongoing
4.20	Review Legacy FCC HR and Financial Operations IT Systems	Ongoing
4.21	Develop an Enterprise Tracking and Collaboration System	Ongoing
4.22	Develop an FCC Data Mart	Ongoing
4.23	Develop and Implement a Data Governance Plan	Ongoing
4.24	Improve FCC Data Collection	Ongoing
5.01	Streamline the Process for Receipt and Processing of Requests for Closed Captioning Exemptions	Ongoing
5.02	Create a "Contacts Database" for Outreach and Consumer Education	Ongoing
5.05	Develop Public-Private Partnerships and Enhanced Transparency to Improve Resolution of Interference Issues	Ongoing

5.06	Improve Databases on Which EB Relies	Ongoing (IT budget constraint)
5.09	Fix/Upgrade the International Bureau Database Functionality	Ongoing (IT budget constraint)
5.11	Improve Access to Satellite Licensing, Orbital Location and Frequency Band Information	Ongoing
5.13	Expedite Rulemaking Consideration in the Media Context	Ongoing
5.14	Update Existing Media Bureau Databases and Forms	Ongoing (IT budget constraint)
5.16	Modernize Hearing Aid Compatibility Compliance Process, Including Enhanced Automation of Reports	Ongoing (IT budget constraint)
5.19	Modernize the Equipment Authorization System	Ongoing (IT budget constraint)
5.21	Provide Clear Guidance on Fee Processes to Petitioners	Ongoing
5.23	Evaluate the Processes Used for Intake, Tracking, Processing, Response, and Publishing of Fee Related Matters	Ongoing
5.31	Update Obsolete Media Rules and Procedures	Ongoing
5.33	Eliminate the BRS Transition Rules Because They Are No Longer Necessary	Ongoing
5.34	Harmonize and Streamline Requirements for Licensees to Overcome a CMRS Presumption	Ongoing
5.36	Update Terminal Attachments Rules	Ongoing
5.37	Remove Rules Subject to Forbearance in 47 C.F.R. § 64.804(c)-(g)	Ongoing
5.38	Delete Rule Provisions Referencing Telegraph Service	Ongoing



5.40	Relax the Equipment Certification Program	Ongoing (IT budget constraint)
5.41	Update Labeling and Identification of Approved Products	Ongoing
5.42	Hold Application Information Confidential Automatically	Ongoing
5.44	Transparency as to Real Party in Interest	Ongoing
5.49	Seek Further Delegation of Low Power FM Licensing Authority	Ongoing
3.03	Consider Whether a "Negotiated Rulemaking" Process Could be Useful to Narrow Issues and Develop Proposed Rules for Commission Consideration	Not Yet Implemented
3.05	Increase Access to External Experts	Not Yet Implemented (IT budget constraint)
3.12	Consider Listing Specific Questions with Rebuttable Presumptions at the End of an NPRM	Not Yet Implemented
5.10	Fix/Upgrade the Information Technology Systems for Cross-Border Work	Not Yet Implemented (IT budget constraint)

3. With respect to the Task Force you established which includes designated representatives of the other Commissioners; you indicated that the Task Force process is "collaborative and inclusive."
- a. Did you share the November 4, 2015 letter with the other Commissioners before sending it to the Committee? When will the "package of consensus recommendations" you refer to be submitted to your colleagues for their review?

**Response:** The Chairman's Office representative to the Task Force, Diane Cornell, discussed the information included in the November 4, 2015 letter with the legal advisors for the other Commissioners, but did not specifically share the text of the letter since it did not provide a substantive update. This Task Force process is ongoing, and my staff is continuing to work with

the staff of the other Commissioners to present a final package of consensus recommendations to the Commissioners. The timing of submission of the recommendations depends on progress made in the Task Force discussions.

4. **The Commission recently began publishing the phone numbers appearing on the caller ID of consumers that are complaining about unlawful robocalls. Is your staff analyzing these numbers to make sure you are not publicizing consumers' phone numbers in the fields that you are publishing? Explain what steps are being taken to ensure that consumers' numbers are not being published.**

**Response:** The Telephone Consumer Protection Act (TCPA) empowers consumers to decide which robocalls they wish to receive. Accordingly, the TCPA and FCC rules require prior express consent before making prerecorded or artificial voice telemarketing calls to residential lines, and before making any non-emergency call using an autodialer or a prerecorded or artificial voice to a wireless telephone number, unless the call is "solely to collect a debt owed to or guaranteed by the United States." Informal complaints filed with the Commission relating to unwanted robocalls are by far the largest complaint category, with over 176,000 such complaints submitted in 2015 alone. The Commission previously has combatted these alleged violations through a combination of outreach to businesses/individuals and enforcement action. Identifying an alleged violator, however, is challenging because the alleged violator's phone number, one of the few means to track unlawful callers, is often either falsified by the calling party as caller ID or seldom provided as a call-back phone number.

In October 2015, the Commission decided that it would make unwanted call data available in order to encourage developers and carriers to come up with ways to identify and block unwanted calls. The Commission made clear that this is an unbiased release of raw data from consumer complaints. The FCC expects this data to be a resource, but not the final word, in call blocking technology developers' determination of which numbers consumers might choose to block. Moreover, the Commission expects technological innovators working on various call filtering and blocking programs to use this data appropriately and work with their customers to find the best way to differentiate between legitimate numbers that have been spoofed and numbers that consumers might want to block. For instance, developers such as Nomorobo have built in a safeguard for when a caller is identified as a robocaller to allow the called party to verify that the caller is a human before the call is completed. Finally, it is important to note that the FCC, to date, has not received any negative feedback from consumers that their phone number was inadvertently blocked while making a call.

The Commission takes the accuracy of its data and protection of consumers' personally identifiable information (PII) very seriously, and there is no PII in the unwanted call data. The unwanted call data does contain the following fields: date and time call received, type of message (e.g., prerecorded), complainant's state, caller ID phone number (if provided) and the advertiser business phone number (if provided). The Commission ensures that the complainant does not provide his or her own phone number in the information that is made available to the public by providing clear instructions for submitting complaint information. For instance, in regard to caller ID information, the FCC asks whether the complainant received caller ID information and, if so, the caller ID number, the caller ID name, and whether the consumer

believes the caller ID information to be accurate. All corresponding telephone number information made available to the public relates to originating or spoofed numbers provided by the complainant, rather than the telephone number of the recipient. The released data is very similar to that released by the Federal Trade Commission (FTC) and, like the FTC, the FCC makes clear that the unwanted call data is not verified.

5. **The Commission must establish a process for states that choose to Opt-out of First-Net to get the approvals they need from the FCC. I know that the question has been asked on multiple occasions since your tenure began when will the FCC establish this process and the stock answer is “we are working on it.” When will stakeholders see something from the FCC? Provide a timeline for the FCC’s action.**

**Response:** We recognize that it is important to provide states and FirstNet with clear and timely guidance on the process that the Commission will use to receive, review, and approve or disapprove alternative state plans as required by the Middle Class Tax Relief and Job Creation Act of 2012. In this respect, it is our goal to have the details of the process finalized and in place in advance of the date that FirstNet delivers its proposed state plans to each of the state governors, which FirstNet estimates will occur in the second quarter of 2017. To that end, and consistent with FirstNet’s anticipated timeline, I intend to circulate a Notice of Proposed Rulemaking this quarter seeking comment on how to structure the process to ensure that the Commission fully carries out its statutory obligations.

**The Honorable Bob Latta**

1. **As a strong supporter of telephone town halls, I noticed with interest the recent petition from Broadnet asking you to issue a declaratory ruling that would make it easier for wireless-only consumers to participate in telephone town halls. The petition states that absent FCC action, citizens that rely on their wireless phones as their primary, or only, means of telephone communication (often low-income or people of color) will be deprived of important opportunities to engage with their government that wired citizens currently enjoy. Now that the comment cycle has closed, when will the FCC address this important issue?**

**Response:** The Broadnet petition asks the Commission to clarify whether the Telephone Consumer Protection Act applies to calls made by or on behalf of a federal, state, or local governmental entity. The Commission’s Consumer and Governmental Affairs Bureau has issued Public Notices seeking comment on the Broadnet petition and on two other petitions raising similar issues. As you note, the comment cycles on those petitions have been completed, and the Commission staff is reviewing the record established in the proceeding. The Commission staff is also closely studying the U.S. Supreme Court decision in *Campbell-Ewald Co. v. Gomez*, which was issued on January 20, 2016, and may provide useful guidance on the issues brought before the Commission by the Broadnet and similar petitions. Please be assured that we will take into consideration the issues and concerns presented by all stakeholders as the Commission reviews the record in this proceeding and will act after a thorough consideration of such issues.

**The Honorable Marsha Blackburn**

1. If the FCC is considering moving to a voucher system for the Lifeline program, how will this affect pre-paid providers?

**Response:** In the 2015 Lifeline FNPRM, the Commission proposed various ways to further reduce any incentive for waste, fraud, and abuse, and in doing so, also streamline the eligibility determination process. Consistent with this goal, the Commission sought comment along a number of lines, including questions about whether Lifeline benefits should be transferred directly to individual consumers. The FNPRM also sought comment on a number of associated issues, including: the costs and benefits of each approach; whether the Commission should establish a national verifier, or work with other interested Federal and state agencies; the various administrative, technological, funding, or other barriers to providing such a portable benefit to the consumer; and protections that should be put in place to prevent fraud or abuse.

By taking steps to reduce administrative burdens and complexity throughout the program, including in the mechanisms by which the Lifeline discount is paid to support the subscription by a beneficiary a provider's Lifeline eligible service, we expect that all program participants including pre-paid providers will enjoy reduced administrative expenses as well as greater flexibility to develop better and more innovative services for beneficiaries.

**The Honorable Joe Barton**

1. In November, the FCC dismissed a petition from Consumer Watchdog which would have required edge providers to allow customers the choice to opt-out of being tracked online. Can you provide further explanation on your reasoning for that dismissal?
- a. Is this an example of how the FCC intends to proceed-imposing obligations on infrastructure providers and not edge providers? This de facto creates two sets of privacy rules. One that applies to some but not others. Does the Commission plan on ever pursuing privacy regulation against edge providers on the Internet?

**Response:** The Consumer Watchdog petition called on the Commission to regulate the privacy practices of edge providers, and the Commission has been unequivocal in declaring that it has no intent to regulate edge providers. The Commission's *Open Internet Order* recognized that broadband Internet access service is properly classified as a telecommunications service subject to Title II of the Communications Act, including the privacy and security obligations in section 222. That decision applies to services that provide access to the Internet, not to edge services provided over the Internet. In light of the scope of the Commission's decision, the Wireline Competition Bureau properly determined that the request to regulate the privacy practices of edge providers plainly did not warrant consideration by the Commission.

2. In a letter dated September 22, 2015, Chairman Wheeler wrote that the Commission

had “opened a dedicated proceeding to consider additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations.” The letter goes on to list these proposals-have any been acted upon yet? Does the Commission have a timeline for enacting these proposals?

**Response:** The Commission has approved measures to aid LPTV and translator stations following the Incentive Auction. On December 16, 2015, the Commission adopted a Third Report and Order that implemented several of the proposals that I discussed in the September 22 letter. The Order includes a range of options to help enable LPTV and TV translator stations remain on the air. The Commission has extended the digital transition date for LPTV and TV translator stations until 12 months following the completion of the 39-month post-incentive auction transition period. This extension will prevent stations from having to upgrade facilities to meet the digital transition deadline before knowing whether the station would be displaced by the auction repacking process. The Commission will also allow channel sharing by and between LPTV and TV translator stations. Channel sharing arrangements could mitigate the effects of repacking displacement by allowing stations to share the remaining television channels and will facilitate the continued viability of LPTV through new programming and business arrangements that promote spectral efficiency. Additionally, to assist LPTV and TV translator stations displaced by the auction and repacking process, the Commission will utilize the repacking and optimization software to identify channels that can be used by LPTV and TV translator stations, at those stations’ request. Using the repacking and optimization software for this purpose will expedite and ease the post-auction transition and help many low-power stations find new channel homes.

3. In the same aforementioned letter, Chairman Wheeler wrote that the Commission believes LPTV and translator services will not be unduly burdened by these changes. What benchmarks does the Commission have for this belief? Has the Commission completed studies or assessments on the impact of the auction on LPTV and translator services? What studies or other assessments have been done to come to this conclusion? Please provide copies, if available.

**Response:** The incentive auction will by definition result in a smaller TV band and, therefore, fewer channels for all television stations – full power as well as LPTV and TV translator stations. The Commission has recognized that the auction will potentially displace a significant number of LPTV stations. However, in light of Congress’s determination not to include LPTV or TV translator stations in the auction or protect them in repacking, we have not systematically analyzed the potential displacement impact on those stations.

**The Honorable Brett Guthrie**

1. As the FCC considers any further changes to the Designated Entity program, what has the Commission learned from recent experience?

**Response:** Congress instructed the FCC to reduce the barriers faced by small businesses, including women- and minority-owned businesses and rural service providers (collectively

referred to as “designated entities”) in order to afford them a meaningful opportunity to participate in the provision of spectrum-based services. The *Competitive Bidding Report and Order* revamped the Commission’s outdated spectrum auction bidding policies to help these entities better compete for a position in today’s wireless marketplace. At the same time, these reforms will enhance the integrity of the FCC’s auctions and ensure large corporations can’t game the system.

The Commission has had designated entity rules in place since the 1990s. However, the Commission had not comprehensively updated the rules since 2006. The amazing changes in the wireless marketplace since then required a review of our policies, and that review made plain the rules needed to be reformed. Today, the concentration of the wireless marketplace and high-barriers to entry and growth makes it very difficult for small businesses and rural service providers to compete against large, nationwide providers.

The *Competitive Bidding Report and Order* provides greater flexibility so that qualified small businesses can find opportunity in the wireless industry. This includes, for example, eliminating the requirement that the winning bidder must build a unique network; under the new rules the winner may choose to build or lease their capacity. The rules also create a new rural provider bidding credit that will incentivize participation in future auctions by rural service providers in the communities they serve. The Commission also increased the revenue threshold to qualify as a small business to account for inflation.

In addition to expanding opportunities for small businesses, the modernized rules will increase transparency and efficiency to prevent potential gaming or abuse, as well as protect the integrity of the Commission’s auction process. In particular, the Commission established the first-ever cap on the total value of bidding credits, minimizing an incentive for major corporations to try to take advantage of the program by finding a small business to act on their behalf. The new rules also take several steps to make sure that small businesses receiving bidding credits are exercising independent decision-making authority. For example, the Commission clarified the types of agreements – including management and operating agreements – that independently or together create the impression that a Designated Entity is not “calling the shots” in order to prevent ineligible entities from obtaining bidding credits. The Commission also limited the amount of spectrum that a Designated Entity may lease to its non-controlling investors during the five-year unjust enrichment period.

The updated rules also make it clear that joint bidding agreements that involve a shared strategy for bidding at auction between Designated Entities and large nationwide companies will not be tolerated. Because this restriction is based on encouraging competition both in the market and in the auction, non-nationwide providers would still be able to participate in certain joint bidding ventures with other non-nationwide providers.

Few areas of our economy hold more promise for driving innovation and economic growth than the wireless sector. We cannot overlook the opportunity this growth presents for American small businesses. Reforms adopted in the *Competitive Bidding Report and Order* will increase

competitive access to spectrum and thus create economic opportunity for small and rural businesses, as well as ensure that the beneficiaries of our competitive bidding rules are those intended by Congress.

2. **Is it correct that the FCC is not recognizing DISH or its DE affiliates as defaulters? And if so, why not?**

**Response:** This issue is currently subject to an active, ongoing proceeding and, therefore, I cannot comment.

**The Honorable Pete Olson**

Chairman Wheeler, in its July 10<sup>th</sup> order, the Commission granted exemptions to the Telephone Consumer Protection Act (TCPA) to allow financial institutions to contact consumers quickly to alert them to fraud on their account, a breach of their personal information, or necessary remediation action.

However, the Commission imposed a condition on these exemptions that requires financial institutions to send alerts only to a wireless number provided by the customer of the financial institution.

I'm concerned this condition, while seemingly pro-consumer, could have an unintended effect of delaying notification to consumers whose information might have been compromised. For instance, if one person set up a credit card account for their spouse—and provided the spouse's phone number in the process—the credit card company would not be able to send a suspicious activity alert to the spouse, even though the spouse would certainly appreciate being notified when their account has potentially been breached.

1. **Why would the Commission grant these exemptions for pro- consumer data breach notifications and suspicious activity alerts, but then prevent financial institutions from sending these time-sensitive messages by any means available?**

**Response:** In ruling on the American Bankers Association request that “financial alert” calls be exempted from the TCPA’s prior express consent requirement, the Commission found that such calls were intended to address exigent circumstances in which a quick, timely communication with a consumer could prevent considerable consumer harms from occurring or help quickly mitigate the extent of harm that will occur. The Commission granted an exemption for such calls, noting that the requirement to obtain prior express consent could make it impossible for effective communications of this sort to take place. At the same time, the Commission was required by the TCPA’s exemption provision to consider conditions on such calls necessary to ensure the privacy rights the TCPA is intended to protect. As a way of ensuring the privacy rights protected by the TCPA – which, in the absence of an exemption, includes the consumer’s right to grant or withhold consent – the Commission found it necessary to require that exempted calls go only to the wireless telephone number provided by the customer of the financial

institution. The financial institution remains free to ask its customer for more than one wireless telephone number, and under the exemption, the financial institution can call as many numbers as the customer has chosen to provide.

2. **The American Bankers Association has filed a Petition for Reconsideration on this “provided number” condition. Could you provide an update on when you expect to issue a ruling on this petition?**

**Response:** The filing of the American Bankers Association petition for reconsideration triggered, under FCC rules, time periods for interested parties to file oppositions to the petition and for the petitioner to reply to such oppositions. The time periods for the latter filings have been completed, and the Commission staff is reviewing the record established in the proceeding. Please be assured that we will take into consideration the issues and concerns presented by all stakeholders as the Commission reviews the record in this proceeding as expeditiously as possible.

3. **In its Petition for Reconsideration, the American Bankers Association stated that “one large bank reports that the provided-number restriction would stop 75% of the calls and texts it sends to alert customers to time-sensitive events like potential fraud on an account or a data breach.” Does it concern you that this condition would prevent one bank from sending 75% of these time-sensitive messages?**

**Response:** The Commission granted the exemption requested by the American Bankers Association with the intention of making it possible for financial institutions to make effective financial alert calls to their affected customers. The Commission recognized the exigent circumstances underlying such calls and the need for quick, timely communications that could prevent or mitigate consumer harms. With these stated goals as background, the Commission staff is actively assessing the record concerning the American Bankers Association petition for reconsideration, including the information provided by the petition itself.

#### **The Honorable Gus Bilirakis**

During a previous oversight hearing I raised my concerns about your plans to close FCC Field Offices and the impacts that would have on the FCC's ability to take action on public safety communications interference complaints within 1 day. In response you committed to provide us with a quarterly status of your success in meeting that metric including information – such as the field office location that received the complaint and when personnel were dispatched to address the complaint – that would permit us to understand how that was being accomplished given your plans to shrink the number of field offices.

Since then you requested that you be permitted to not provide the data I requested because “the enforcement bureau data base doesn't track the information in a searchable field” and you would have to compile the information manually. However, in a December 2014 letter to the Committee about the enforcement bureau's management



you described a new consolidated data management and tracking system that gave you the ability to efficiently analyze and track complaint data.

1. Explain why you cannot provide the information requested if the new consolidated data management and tracking system gives you the ability to track and analyze the complaint data.
2. You indicated in the first of such quarterly reports that you met the metric. Could you explain what you mean when you advise us and public safety as well as the public that the FCC has met the standard to “take action” within a 1 day to these complaints - Does it mean that the interference has been resolved? If not, explain what you mean when you represent that the FCC has taken action in response to complaints regarding interference to public safety communications.
3. How long does it take – on average – to actually resolve the interference? Is that something you track? If not, explain why not.

**Response:** The FCC began posting reports on our public safety interference complaints earlier this year. We posted the April through June reports earlier this year, and plan to post July through December shortly. The reports may be accessed at the following link:  
<https://www.fcc.gov/pubsafix>

The reports include the responding office and other information, although they do not include when personnel were dispatched to the site, in part because many resolutions do not necessitate a site visit. Accordingly, the Commission does not track that information in a searchable field. This information is captured in the “Notes” field in the database, but staff would need to review each case manually to enter it into the report. In any event, many interference complaints do not require a site visit, but rather are resolved by a call or email exchange between the field agent and the complainant.

As for the date of interference resolution, we do not track that information separately. We do track when we close a complaint/case, which is often the same date or contemporaneous with resolution of the matter.

Taking action within one day regarding public safety interference complaints refers to initial contact with the complainant. As noted above, this initial contact, followed by email and phone conversations with involved parties, frequently resolves the issue raised.

**The Honorable Bill Johnson**

During the hearing I asked several questions about recent FCC information technology activities, including the FCC’s request to use approximately \$8.4 million in funds to relocate the FCC’s servers. In your written testimony, you expressed concern that Congress has raised questions about the efficiency and effectiveness of the FCC’s spending on IT.

1. The FCC requested over \$8 million in funds through the reprogramming process to re-locate the FCC's servers. Why didn't the FCC vet this server re-location project through the normal appropriations process? Please provide an accounting of all funds spent on this project. Please describe the contingency planning the FCC has in place for IT operations like the server re-location.

**Response:** Like most agencies, the FCC works closely with the leadership of its Appropriations Committees throughout the year to ensure the best use available resources. Due to the Federal budget process calendar cycle, the FCC's annual budget is drafted more than a year before the applicable fiscal year begins. Once the FCC's appropriations are approved but before the next appropriations cycle is complete, the FCC may identify additional available funds through cost saving measures or other changes in spending priorities. The FCC also submits draft reprogramming proposals to the Office of Management and Budget (OMB) to review prior to submitting requests to appropriators.

In this instance, the FCC contacted OMB to inform them about the request, and then sent two letters, dated October 23, 2014, that provided the funding sources, the amounts requested by project, and a description of each project. OMB provided the FCC with written approval of its request on November 6, 2014. After receiving approval from OMB, the FCC informed its House and Senate Appropriations' Subcommittees (Financial Services and General Government) of the forthcoming request. The FCC then sent two reprogramming letters to the Subcommittee Chairmen and Ranking Minority Members in both the House and Senate. The letters were dated November 7, 2014 and provided the same information that the FCC had previously provided to OMB. The House Appropriations Subcommittee provided written approval on November 18, 2014. The Senate Appropriations Subcommittee provided written approval on December 2, 2014. Once approval was received from both the House and Senate, the FCC then proceeded to obtain official authorization (apportionment) from OMB to begin committing the funds for the requested projects.

**(Sub-Question A) Please provide an accounting of all funds spent on this project.**

The FCC's reprogramming requested a total of \$8.75 million for its server move and corresponding system migrations to cloud environments. We derived the funds from two sources. The bulk of the funds, or \$6.5 million of the total, were deobligated no-year funds from prior fiscal years. The remaining \$2.25 million were deobligated auctions funds from prior fiscal years and reprogrammed only for auction-based use. The FCC is using all of the funds that were approved for reprogramming.

The \$6.5 million requested through the reprogramming breaks down into three separate parts:

- **Engineering Services to Move the Server Room (\$500k)**
  - The FCC used these funds to prepare for the offsite migration of the FCC's computing infrastructure. The FCC hired a contractor to perform engineering services that were required before the actual move of the server room could occur.

- ***Server Lift to a Commercially Managed Facility (\$3M)***
  - The FCC used these funds to move its computing infrastructure from the FCC's headquarters facility to a commercially managed service environment. The move to a commercially managed service environment with back-up capabilities provides additional security and a stable platform for the FCC to utilize during its ongoing efforts to modernize its systems and applications. The move is also helping the FCC to migrate to IPv6 and to improve fail-over capabilities for the FCC's Gettysburg facility.
- ***Migration of FCC Applications to the Cloud (\$3M)***
  - Certain FCC systems, including the Electronic Comment Filing System (ECFS), Electronic Documents (EDOCs), Broadcast Public Inspection File (BPIF), and Commission Registration System (CORES), contain unsupported software packages that were preventing modernization efforts. The FCC needed these funds to perform the necessary preparatory work to re-write the systems as modular cloud applications. This investment will result in lowering overhead costs, reducing contractor costs, and remediating audit findings related to these systems.

We designated the \$2.25 million in auction funds requested through the reprogramming specifically for upgrading the FCC's largest licensing system -- Universal Licensing System (ULS), which is the main system WTB uses to support post-auction award of licenses.

- ***Migration of ULS to the Cloud (\$2.25M)***
  - The FCC's current Universal Licensing System (ULS) is aged and contains unsupported software packages that prevent modernization efforts and upgrades that can result in efficiencies and cost savings. As written, ULS could not run in a cloud environment, where it could be continuously updated and upgraded. The FCC needed these funds to rewrite ULS as a modular cloud application. This investment will result in lowering overhead costs, reducing contractor costs, and remediating audit findings related to these systems.

**(Sub-Question B) Please describe the contingency planning the FCC has in place for IT operations like the server re-location.**

The contingency planning that was in place for the server move involved replication of the FCC's Storage Area Network (SAN), which is the key storage device for the FCC's applications and data, prior to the move to ensure full redundancy and eliminate the risk of data loss. After replication, the SAN was moved to a secure location in the event that there was a disaster during the move of the actual SAN from the FCC's headquarters to its destination in West Virginia. The SAN was installed and tested in the West Virginia facility, and the back-up SAN was then decommissioned. Most of the FCC's critical systems are run with back-ups in its Gettysburg facility. The FCC ensured prior to the move that the backups were up to speed and ready to be brought up in the event the FCC had any system(s) failure after the move of the equipment. Also, every year the FCC conducts disaster recovery exercises where the FCC fails over to its Gettysburg back-ups with its major systems and then returns to normal operations after the testing is complete.

2. The FCC seems to have a track record of proposing to spend millions of dollars on IT projects, and then abandoning the plans or deciding to implement entirely new projects. For example, after spending millions of dollars to consolidate and upgrade the IT systems used for processing licenses, the FCC abandoned the project. Similarly, the FCC spent millions to deploy a new Internet site that had been criticized as not working. What explains the FCC's track record of changing spending plans on IT in mid-stream? What assurances can you provide that the FCC is not currently wasting or mismanaging funds on IT projects? What oversight has the FCC's Inspector General conducted over IT spending since your tenure as chairman?

**Response:** The examples listed all pre-date my tenure at the Commission, and the tenure of my senior responsible staff, so I cannot provide information on those projects. The current Chief Information Officer (CIO) and Managing Director have worked diligently to ensure that the FCC's information technology projects are implemented timely, under budget, and also deliver on their objectives. This focus can be seen in the results of the current CIO management team, which has undertaken and accomplished several significant initiatives, including implementing virtual desktop remote access to FCC workstations, adopting a cloud-based environment for e-mail, rolling out the FCC's new consumer complaint system, which was deployed faster and for a lower cost than was previously thought to be possible, retiring approximately 70 legacy servers, moving more than 120 servers to a commercially hosted federal data center, and vastly improving the usability and searchability of the FCC's website.

Importantly, in addition to the concrete results listed above and described in more detail below, the CIO and Managing Director have put in place a rigorous enterprise planning and performance (EPP) framework for information technology investments. This framework provides a comprehensive new process for ensuring that IT projects are fully consistent with the Commission's objectives, timing needs, and budget. Its scope is detailed below in response to question four.

As a result of the server move, our headquarters no longer has any servers on-site, which was a major step forward in the FCC's information technology modernization. The Commission's server move to a commercially operated federal data center provides us with far greater resiliency, more reliable up time, improved patching, and better back-up capabilities, as well as scalability for its future needs. The server move also helps avoid significant near term costs we would have incurred if the servers were not moved. Currently, GSA is evaluating proposals for a new lease for the FCC's headquarters due to the expiration of our headquarters lease. We expect that we may have to move our staff and onsite equipment in the near future. If the FCC had to move the data center that was in place in its headquarters prior to the server move, the FCC would have spent \$15 million in build-out costs alone. The server move to the federal data center was accomplished at less than a third of this cost.

Having completed the server lift, we are able to more fully leverage cloud service offerings. For example, the FCC's new Consumer Help Desk system was fully deployed in the cloud. I'm

proud of the work we did here – we delivered the Consumer Help Desk for \$450,000 using commercially available software as opposed to a \$3.2 million potential cost for in-house development. Also, the cost to maintain this cloud based system is only \$100,000 per year, far less than if the FCC had undertaken a custom build.

I would like to expand on the website initiative, because of the importance our management team's work in this regard. During the past two years the FCC's information technology team worked to significantly improve the quality of the FCC's website. As a result, the FCC launched a new and improved [www.fcc.gov](http://www.fcc.gov) in December of 2015. Before this redesign, it was clear that the last iteration of the website lacked a clear information architecture, making content very difficult to find. Working with frequent users of the website and analyzing ways in which visitors used the website, our staff found that users had specific information needs that they wanted to satisfy in as few clicks as possible.

The response to the new website has been very positive. The Commission's analysis of users' experience with the new website found that they showed a clear preference for the new site's design, searchability, visual appearance, and homepage functionality. In fact, 88 percent of the users of the new site were able to find specific content for which they were searching as opposed to only 27 percent of users of the old site.

I am proud of our accomplishments but I have also directed our information technology team to focus on continuing to make improvements. Moving forward, the FCC's information technology team will continue to lead the FCC's shift to a data-centric approach that supports the regulatory, enforcement, consumer engagement, and licensing missions across the FCC's Bureaus and Offices.

With respect to the question about any related audit work performed by the Office of Inspector General (OIG), please be assured that our staff has been directed to be responsive to the OIG's inquiries. I am aware for instance, that the OIG coordinates an annual audit of the FCC's information technology systems pursuant to the Federal Information Security Management Act (FISMA). The focus of the FISMA audit is information security and privacy controls. As a result of this audit, the OIG reviews the FCC's information systems and information system related policies on at least an annual basis. With respect to information technology spending specifically, the OIG has discretion to perform any audits or inspections that the OIG deems necessary. While the OIG conducts audits and inspections of FCC activities regularly, there has not been an audit or inspection specifically focused on information technology spending during my tenure.

3. **The FCC has been criticized in the past by the GAO for wasting spending on computer security enhancements. What has the FCC done specifically to address the concerns raised by the GAO about its computer security environment, and how has the FCC safeguarded tax-payer money spent on this project?**

**Response:** The GAO reviewed a specific computer security-related project in the second half of

2012 as a result of a request from the FCC's Appropriations' Subcommittees. The funding request project and subsequent GAO report all predate the current Managing Director and CIO. We have made strengthening the FCC's computer security a top priority and I also directed my staff to brief GAO on steps that the agency has taken to respond to the GAO's January 2013 report.

Importantly, the GAO findings focused on project planning and approvals for key decisions during the 2012 project. Since that time, the FCC has updated its enterprise planning and performance (EPP) framework for information technology investments. The EPP framework is at the center of information technology portfolio management, project planning, and strategic direction at the FCC. EPP unifies the FCC's information technology investments by applying a common process to project proposals and investment decisions. Utilizing EPP, the FCC has implemented a number of processes and procedures which facilitate a more efficient method of proposing, reviewing, and approving information technology requests.

The FCC has briefed GAO on its efforts and is awaiting GAO's feedback on closing the recommendations from the report. The FCC believes that all of the recommendations should be closed, and notes that the GAO has closed at least one recommendation based on the documentation of corrective action provided by the FCC.

With regard to your question concerning what steps the FCC has taken in the area of computer security, the FCC's information technology team is working hard to improve the resiliency of the FCC's information systems. I understand that achieving perfect cyber security is not attainable given the nature of cyber threats, but we will continue to do everything we can with available resources to strengthen our systems. As I previously noted, the quality of the FCC's information security is audited each year by the OIG pursuant to FISMA. At the end of the most recent FISMA audit, we had made significant improvements and reduced the OIG's findings by 50 percent. We issued a new cyber security policy and provided security awareness training to its employees and contractors, with a 99 percent completion rate. The significant level of effort placed on closing the OIG's open findings from the previous FISMA audits shows our commitment to making the FCC the most secure cyber environment possible.

Achieving these improvements has been the result of a multi-faceted approach that focuses the Commission's resources areas that will have the greatest impact. The first step in the FCC's modernization of our legacy information technology infrastructure was to complete a server lift to a commercially run federal data center. We successfully completed the lift in September of 2015, providing the FCC with a more secure environment, the agility necessary to move applications into a cloud environment, and a reduction in cost for every server decommissioned.

In the work necessary to prepare for the move, more than 20 percent of the FCC's outdated servers were decommissioned, lowering the FCC's exposure to downtimes and breaches. Prior to the server move, the Commission also migrated to Microsoft's Office 365, the Microsoft Cloud solution, providing a secure cloud environment for the FCC's e-mail and office automation needs. Finally, to facilitate more secure and accessible services, we implemented virtual desktop infrastructure (VDI) that enables employee and contractor remote access to FCC workstations from any location with internet access, reducing the cost of the FCC having to

individually patch and update workstations. By opting for Microsoft's Office 365 and VDI infrastructure, we significantly strengthened our computer security over the legacy infrastructure.

4. **Please provide a copy of the FCC's policies and guidelines for the use of social media by FCC employees. Please describe the FCC's controls and procedures for preventing the disclosure of non-public information through social media. Please describe what corrective action you plan to take following the disclosure of non-public information on social media about the FCC's server re-location.**

**Response:** Attached please find the FCC's Directive (1440.1), "Official Use of Social Media by the FCC's Bureaus, Offices, and Staff." As described in this directive, the FCC has controls over who may obtain social media accounts as well as controls over the process for posting information through social media accounts. Employees are directed to coordinate internally as necessary with the Office of Media Relations as well as the Office of General Counsel and others to ensure that their use of social media on behalf of the FCC is consistent with Federal laws and regulations. Employees are cautioned to avoid unintentionally disclosing confidential or privileged information concerning pending proceedings or ongoing policy issues, or personally identifiable information.

Achieving the proper balance between having controls over social media usage and successfully utilizing its potential to communicate broadly to the public is a challenge facing all Federal agencies – and the FCC is no exception. Since the November hearing, I have reiterated my commitment to responsible social media usage and asked my staff to report to me on the current status of internal guidelines. I remain confident that the Commission's staff has adequate direction on social media usage.

As noted in the Directive, the FCC encourages the use of social media technologies to enhance communication, transparency, collaboration, and information exchange in support of the FCC's mission and open government initiatives. Maintaining good controls over account access and content dissemination is important to administering a useful social media program for any agency. The Commission will continue to evaluate these controls to consider evolving social media tools.

5. **You confirmed that FCC employees were told to stay home when the FCC was unable to restore all IT functions in the time-frame established for the relocation of the servers. What was the impact of the additional three day shut-down on FCC productivity?**

**Response:** Although we experience some disruption of routine day-to-day operations at the FCC, I am proud of the commitment of our employees in continuing to work and serve consumers and our stakeholders during this period. As a result, disruptions were minimal and we recorded no major adverse impacts. No external FCC business systems experienced unscheduled downtime – those servers were all up and working on schedule.

I was apprised of the daily developments and consulted routinely with the Office of Managing Director's staff to make certain that they moved as quickly as possible to implement this project. As it turned out, the primary issue we faced with the server move involved restoring internet

connectivity to our headquarter (HQ) offices. Resolving this situation involved a complex round of problem solving with both the lift contractors and the connectivity provider.

The only appreciable impact to staff was the inability to access email onsite. We had carefully planned for the move and evaluated these risks. Prior to the server move, the FCC migrated its email and office automation needs to Microsoft's Office 365, providing a secure cloud environment. FCC staff were provided training on this solution and could continue to work remotely despite the delay in re-establishing connectivity at HQ. This move to Microsoft 365 enabled the vast majority of staff to remain productive while teleworking.

Below please find the day-by-day guidance that we provided to our employees from September 3 through September 11, 2015:

- September 3 – 4: The FCC was open on time, and HQ employees could take leave as necessary and telework ready employees could telework.
- September 5 – 7: Labor Day Weekend.
- September 8 – 9: The FCC was open on time, and HQ employees could take leave as necessary and telework ready employees could telework.
- September 10: The FCC was open on time, and employees were expected to resume normal work schedules.
- September 11: The FCC was open on time. The FCC encouraged telework ready employees to telework to provide the server move support team the greatest flexibility to test and verify the connectivity solution.

6. On November 23, 2015, the FCC announced that it is launching a redesigned website on December 10th. The FCC's public notice states that the website was redesigned "to provide better functionality, an improved design, and better searchability and navigability." This redesign comes after the FCC spent millions of dollars to launch a new website in April 2011. The FCC Budget Requests do not appear to propose spending funds on a website redesign in FY 2014, FY 2015 or FY 2016. Explain the background behind the FCC's redesign of its website, including the justification for the project, the initial budget for the project, the total amount of funds spent on the project (and the funding sources), and the timeline for the project (including any changes to the timeline made over the course of the project). In addition, please provide copies of any briefing materials or project updates provided by the FCC's IT staff to your office.

**Response:** When I took office in 2013, I commissioned a staff Process Reform Task Force to identify processes and procedures of the FCC that needed improvement. Leading up to the release of the report, the staff engaged in an extensive review of internal processes, with input from both internal and external sources. During this review, the FCC's website received substantial criticism.

As far as history, I have been advised that in 2011, the FCC initially redesigned its website ([www.fcc.gov](http://www.fcc.gov)), replacing the FCC's previous website, which remained available as



transition.fcc.gov. The intent of the 2011 effort was to increase the focus of the website on consumers with topic-based navigation and more emphasis on graphics. The effort also implemented a widely-used content management system. While the 2011 website redesign had certain advantages over the previous website, some users (both external and internal) expressed frustration with certain aspects of the new website's functionality, especially its search and navigation functions. The Process Reform report recommended addressing these concerns as a high priority project and I gave my permission to do so. Specifically, the report included three recommendations related to the website: improve website search functionality; implement a consistent design for the FCC's web presence; and improve Bureau and Office webpages and update the [www.fcc.gov](http://www.fcc.gov) information strategy.

In July of 2014, an FCC team set out to tackle these challenges and began systematically researching the website functionality and design that would be most beneficial to frequent users. This research would ensure that both users and the FCC could maximize the utility of [www.fcc.gov](http://www.fcc.gov) as a communications and business tool. In April of 2015, based on the FCC's research efforts and user input, the FCC released a new beta version of the website ([prototype.fcc.gov](http://prototype.fcc.gov)). Building upon the foundation of the extensive user research performed during the lead-up to the beta version, the FCC sought fresh input from users on the beta website to ensure that the new website would be both useful and accessible to all FCC stakeholders. On December 10, 2015, the FCC launched the new and improved [www.fcc.gov](http://www.fcc.gov). The feedback has been primarily positive. Of those submitting feedback, the vast majority of visitors to the website say that they prefer the new refreshed approach versus previous incarnations of the user interface and design.

With respect to the project costs, below please find a description of the major phases in the development of the new [www.fcc.gov](http://www.fcc.gov) provided by the Office of Managing Director, as well as the associated costs:

- Phase 1: Tasks included content research, audience research, usability testing, developing new design, launching prototype, and establishing migration path to new website.  
Timing: July 2014 – May 2015  
Cost: \$448,081
- Phase 2: Tasks included web development of new site, migration of all web content, launch of new site, and implementation of improvements to the FCC's primary electronic document publishing system (EDOCS).  
Timing: June-December 2015  
Cost: \$800,000
- Phase 3: Tasks include website maintenance and support as well as final transitions of content from legacy website pages, including wireless related pages and any remaining transition.fcc.gov pages.  
Timing: January-October 2016  
Cost: \$400,000

- Post-Phase 3. As with the FCC's other information systems and past iterations of the website, the FCC expects to have on-going operation and maintenance costs and to require development support on as needed basis for the website.

**The Honorable Renee Ellmers**

1. **The Department of Justice recently stated that they will not take a position on the municipal broadband issue, even as they are defending the Commission on other controversial issues. What do you think this says about the Commissions attempt to pre-empt state laws?**

**Response:** I would refer you to the Department of Justice for its position on this or any other particular case. I do not believe any conclusion should be drawn on the merits of a case based on speculation about signatures on a brief. What is certain is that community broadband in Chattanooga and Wilson has delivered robust broadband to consumers.

2. **Where in Section 706 of the Telecommunications Act does it say the FCC is allowed to preempt state laws?**

**Response:** I respect the role of state government in our federal system. When state laws come into direct conflict with important federal laws and policy, however, they may be subject to preemption. This is not an action that I take lightly or without careful consideration of all relevant factual, policy, and legal issues.

My starting point is always the language of the statute that Congress has enacted. Here, Section 706 of the Telecommunications Act of 1996 directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans. . . ." If the Commission determines that such services are not "being deployed to all Americans in a reasonable and timely fashion[.]" Section 706 provides that the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." In *Verizon v. FCC*, all three judges agreed with the Commission's conclusion that Section 706 conveys substantive authority to the Commission, as did the Tenth Circuit in *In re: FCC 11-161*. In the *Verizon* case, Judge Silberman, expressing his individual views in a separate opinion, specifically characterized preemption of state laws restricting municipal broadband as a "paradigmatic" example of the authority given by Congress to the FCC under Section 706.

3. **Does the commission plan to pre-empt any other state laws or will it forbear on further preemption?**

**Response:** The Commission's February 2015 decision with respect to provision of broadband by municipally-owned entities in Tennessee and North Carolina was in response to specific petitions filed with the Commission. Currently, there are no similar petitions pending before the Commission.

**The Honorable Chris Collins**

1. When adopting the recent reorganization of the Enforcement Bureau field offices, you indicated that the FCC would devote resources to combat pirate radio. Yet after several months, the FCC has not even adopted a policy statement or plan to address the issue. When will you adopt a policy statement?

**Response:** In the *Field Modernization Order* issued last summer, the Commission stated it would “continue to work with outside stakeholders to develop a comprehensive policy and enforcement approach to the issue of unlicensed radio broadcasting.” We have done so, meeting with Commissioners, broadcasters, radio professionals, and other parties to discuss both policy and enforcement means of addressing this difficult issue. We have identified several ideas for possible implementation and hope to progress on this front soon.

The Commission’s policy on pirate radio needs no further clarification – pirate radio is unlawful and subject to strong enforcement, including significant financial penalties and loss of equipment. The Commission continues to devote substantial resources to the issue of pirate radio. Under my administration, since November 2013, the Commission has taken 309 enforcement actions against pirates, with a monetary value of \$354,000. Indeed, pirate radio has been one of the most active areas for enforcement. During calendar years 2014 and 2015, pirate radio constituted 20 percent of the overall enforcement actions taken by the Enforcement Bureau.

2. In your July 27, 2015 letter you indicated that the FCC had issued more than 100 enforcement actions. How many are Notices of Unlicensed Operation, which are merely warning letters?

**Response:** For the period reflected in the July 27, 2015 letter, the Commission had issued 63 Notices of Unlicensed Operation (NOUOs). Although they do not impose a financial penalty, NOUOs can be an effective tool in combatting pirate radio issues. In some cases, parties may not realize that operating a radio station without an FCC license is unlawful or that the FCC is aware of their activity. A NOUO informs these parties that they are under investigation and may face significant financial penalties, and often results in a shutdown of operations. NOUOs also put other parties (e.g., landlords) on notice about unlawful operations on their premises, and often encourage those parties to take independent action to shut down those operations.

3. Since our last hearing the FCC has issued fines (aka, Notices of Apparent Liability) to only 5-6 pirate stations in New York and New Jersey. Yet, there continue to be hundreds of pirates in the NYC metro area. Has the enforcement bureau conducted any equipment seizures in the New York region? If not, why not?

**Response:** During my tenure as Chairman, the Commission has assisted with six pirate radio equipment seizures, three of which were in the New York City region. Because the Commission lacks independent statutory authority to conduct such actions, we must work with local United States Attorney’s offices, which may delay or decline our requests because of their own resource limitations and competing priorities. Such seizures require substantial resources, both in terms

of litigating the matter in federal district court as well as arranging for U.S. Marshals and other law enforcement personnel to conduct the seizure. Although we have not participated in any equipment seizures recently, we are working with U.S. Attorney's Offices in the New York City region to initiate such proceedings.

4. **After the FCC issues a Notice of Unlicensed Operation, does it routinely follow up with additional actions? How long does it take the FCC to issue a Notice of Apparent Liability? How long does it take to issue a Forfeiture Order? How long does it take to seize equipment?**

**Response:** After issuance of a Notice of Unlicensed Operation against an alleged pirate radio operator, Commission field agents generally follow up to confirm whether the unlawful operation has ceased. The timing and nature of that follow-up depends on the availability of staff and their other responsibilities, including responding to public safety complaints. Drafting and releasing Notices of Apparent Liability for Forfeiture (NALs) and Forfeiture Orders (FOs) often requires significant coordination between multiple bureaus and each Commissioner's office. Depending upon the nature of the violation and potential legal arguments that must be addressed, NALs and FOs may take up to several months to draft and issue.

After the issuance of an NAL, the alleged perpetrator of the violation has a statutory right to respond. Commission staff must review and research the arguments made in those responses, often consulting with other FCC Bureaus and Offices. Staff may also communicate with counsel for the subject of an NAL. For example, we may attempt to reach a settlement through a Consent Decree. If those negotiations are unsuccessful or become too lengthy, we then proceed with a FO. Although the exact timing of each action varies from case to case, the Commission strives to issue NALs in appropriate cases within one year of the violation date, and FOs within one year of the release of the relevant NAL.

As stated above, the Commission does not have statutory authority to initiate equipment seizure proceedings. We must work with local U.S. Attorney's Offices and therefore the timing of any proposed seizure depends on the facts of the case and the resources and other responsibilities of the Commission and the relevant U.S. Attorney's Office.

5. **I have heard reports that the FCC will only investigate pirate radio interference complaints submitted by broadcasters, not listeners. Does the FCC act on complaints submitted by consumers concerning interference from pirate radio stations? If you do not investigate pirate radio interference complaints from the public, how do you know whether your enforcement policies are working?**

**Response:** The Commission acts on pirate radio complaints from the public as well as broadcasters. For example, in September 2015, we proposed a \$15,000 forfeiture against a New Jersey pirate radio operator that had generated numerous consumer complaints. Further, the Enforcement Bureau is actively investigating more than 40 pirate radio matters throughout the country.

6. **Once a complaint is filed, how long does it take for the FCC to act? Do you keep records of all complaints and dispositions? Where should consumers file a complaint?**

**Response:** The timing and nature of an FCC response to a complaint depends on the resources available to the agency. Although we lack the resources to investigate every complaint received on every issue, we do our best to investigate complaints alleging pirate radio issues as quickly as possible, subject to our resource limitations and other responsibilities. The Commission tracks all complaints received, and the Enforcement Bureau maintains a separate database that tracks the disposition of all complaints referred to the Bureau. Consumers should use the Commission's online complaint form at [www.fcc.gov](http://www.fcc.gov).

7. **How long does it take a pirate radio complaint filed with the FCC's Zendesk web portal to reach the appropriate Enforcement Bureau officials. (We have had reports that it takes weeks or months). The public safety bureau also opened up an interference website, should consumer EAS complaints be filed there as well? Is there coordination between the two web sites? Explain.**

**Response:** On average, pirate radio complaints take about 8 days from the date of filing with the Commission's consumer complaint web portal to reach the Enforcement Bureau's (EB's) case management database. EB management reviews those complaints and determines, based on the allegations and available resources, when and whether to assign them to field agents.

The Public Safety and Homeland Security Bureau (PSHSB) recently debuted its Public Safety Support Center (PSSC). That web portal is intended for 911 Call Centers and other public safety entities to request support from the Commission and notify it of problems or issues impacting the provision of emergency services, including notifications of interference to public safety spectrum. The PSSC uses ZenDesk, the same customer service software and support ticket system used by the FCC's Consumer Help Center, but is independent of that complaint portal. Consumers should not use the PSSC for their complaints, but continue to file via the Commission's website. Interference notifications submitted via the PSSC are reviewed by the FCC's 24/7 Operations Center. Complaints deemed an immediate threat to public safety are forwarded to the relevant FCC Field Office for action within 24 hours of receipt.

8. **To protect public health and safety the FCC has very strict RF radiation rules governing licensed stations. A number of the pirate stations are fairly high powered and operate from apartment houses and in residential areas. Has the FCC ever conducted an RF radiation test on pirate radio transmissions? Why have you not focused on this problem?**

**Response:** The Commission has focused its enforcement efforts on quickly shutting down the worst pirate radio operators, including those operating at high power levels. Our current approach allows us to shut down pirate radio operators simply for operation without an FCC license.

9. The FCC's most recent fines have been in the range of \$10,000 to \$16,000. Yet some of these pirate stations make hundreds of thousands, indeed millions of dollars from their operations. In order to create an effective deterrent, do we need to increase the amount of fines?

**Response:** While we are unaware of any specific data regarding the amount of revenue made by pirate radio stations, we know that some unlicensed stations earn advertising revenue that supports their unlawful operations and might otherwise go to licensed broadcasters. We would welcome any congressional interest in raising the statutory forfeiture limit on pirate radio operators. We note, however, that most pirate radio operators have limited funds. Therefore, in most cases, any forfeitures will be difficult to collect. Nevertheless, increased forfeiture penalties may serve as a further deterrent for this unlawful conduct.

10. Have you increased the number of people in the New York regional office to combat the chronic pirate problem? Your earlier reports seemed to indicate that some regional offices are not very busy. Why not temporarily move these individuals to New York?

**Response:** As part of the Field Modernization plan adopted by the Commission last year, we plan to nearly double the number of engineers in the New York City field office. As part of an "enforcement surge" project, last year we detailed staff from multiple field offices to New York City. Those field agents spent hundreds of staff hours identifying pirate radio operations and locations, which resulted in the issuance of 12 NOUOs. This New York City surge effort has resulted in seven shutdowns of pirate radio operations, as well as five proposed forfeitures worth \$75,000.

**The Honorable Anna Eshoo**

As you know, the recently passed budget bill included new authority for debt collectors to use robocalls and text messages to contact student loan borrowers, mortgage borrowers, and others with debt owed to or backed by the federal government. In just the past three weeks, nearly 200 of my constituents have written to me asking that there be no robocalls to their mobile phones without their consent.

1. Can you assure me that the Commission will do everything in its power to protect my constituents against unwanted robocalls?

**Response:** The Commission is committed to the TCPA's goal of protecting consumers from unwanted calls and texts. We know consumers value their privacy, regardless of whether unwanted efforts to reach them target their home landlines or wireless phones. As you note, Section 301 of the Bipartisan Budget Act of 2015, which amends the codified Telephone Consumer Protection Act, creates an exception to the TCPA's prior express consent requirement for automated calls to cellular or residential telephones for the purpose of collecting debts owed to or guaranteed by the United States. A key provision of the statutory amendment, however,

directs the Commission to consider whether to limit the number or duration of excepted calls. In light of the nine-month timeline required by the statute for adoption of implementing rules, the Commission staff is actively working on proposals that will implement the statute while protecting consumer privacy rights.

**The Honorable John Yarmuth**

A lot of work is underway to respond to the wireless broadband demands of our economy. At the top of this list is the upcoming incentive auction. We know there is a likely shortage of qualified tower crews for transitioning broadcasters to their new channel assignments after the auction concludes.

We also know that our service members gain valuable job and leadership skills in our military, yet many have difficulty transitioning back into the workplace.

1. What are you all doing on this issue?
2. Would you be committed to working with both broadcasters and veterans groups to see if there is an opportunity here for our nation's veterans as we head through this complicated process?

**Response:** The increased demand for broadcast tower crews post-auction presents a great opportunity to hire veterans, including those who obtained relevant skills while serving our country. We will encourage broadcasters, tower companies, and tower crews to pursue this opportunity. Specifically, we will reach out to the various parties involved in broadcast tower work and organizations that identify employment opportunities for veterans, to create connections and encourage a dialogue.

**The Honorable David Loebsack**

Video Relay Service, or VRS, is an essential service for deaf and hard of hearing consumers. I understand and applaud the Commission's efforts to reduce waste, fraud and abuse in the program in recent years. But concerns have been raised about a deterioration in the quality of service provided by VRS companies as the FCC has taken action to cut costs.

1. Has the FCC done any study of the impact the cuts have had on the quality of service provided to customers?

**Response:** An important measure of the quality of telecommunications relay services (TRS) is the speed of answer, i.e., providers' fulfillment of their obligation to ensure that they have sufficient communications assistants (CAs) available to respond to a user's initiation of a TRS call in a functionally equivalent manner. As noted in the Commission's recent Further Notice of Proposed Rulemaking (FNPRM) proposing a limited compensation rate freeze, the TRS Fund Administrator, Rolka Loube, recently conducted a study of VRS speed of answer over the 12-

month period from May 2014 through April 2015. During this period, the VRS compensation rate was twice adjusted downward in accordance with the four-year schedule of adjustments previously adopted by the Commission. Throughout this period, the Administrator found that all six VRS providers were not only in full compliance with the existing speed-of-answer standard requiring that 80 percent of calls be answered within 120 seconds, measured monthly, but they were also in full compliance with the much stricter compliance standard proposed in the FNPRM, requiring VRS providers to answer 80 percent of calls within 45 seconds, measured monthly. This study indicates that, despite the Commission's adjustments in provider compensation toward levels based on actual provider costs, providers continue to be able to provide a quality of service well above the Commission's minimum TRS standards.

In order to receive and retain FCC certification to provide VRS, all providers must meet our mandatory minimum standards for TRS, including, for example, ensuring that VRS CAs are "qualified interpreters" who are "able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary." VRS providers must make their services available 24 hours a day, 7 days a week, and are subject to detailed requirements on handling emergency calls and numerous other matters related to service quality. The Commission and the TRS Fund Administrator actively oversee compliance with these rules, and the Commission also monitors consumer complaints to ensure service quality issues are appropriately addressed.

**2. Would freezing rates make sense to look into quality of service and potential improvements that VRS providers could make?**

**Response:** The Commission will continue to monitor the impact of the VRS compensation adjustments in the current year. In addition, the Commission is considering a number of potential improvements in the quality of VRS. The Commission has sought detailed information on the cost of such improvements in order to ensure that any necessary improvements are adopted with due consideration of the impact on provider costs and any necessary adjustments in compensation.



FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

January 14, 2016

The Honorable Mignon Clyburn  
Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Dear Commissioner Clyburn:

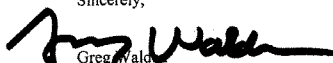
Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, November 17, 2015, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Thursday, January 28, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Greg.Watson@mail.house.gov](mailto:Greg.Watson@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden  
Chairman  
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment



Mignon L. Clyburn  
Commissioner

FEDERAL COMMUNICATIONS COMMISSION

January 28, 2016

The Honorable Greg Walden  
Chairman  
Subcommittee on Communications and Technology  
Congress of the United States  
House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515-6115

Dear Chairman Walden:

Thank you for submitting additional questions for the record from my testimony before the Subcommittee on Communications and Technology hearing on Tuesday, November 17, 2015 entitled "Oversight of the Federal Communications Commission."

Pursuant to the instructions in your letter of January 14, 2016, my responses follow in this format: (1) the name of the Member whose question I am addressing, (2) the complete text of the question I am addressing in bold, and (3) my answer to that question in plain text.

On January 28, 2016, I mailed my responses to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed them in Word format to [Greg.Watson@mail.house.gov](mailto:Greg.Watson@mail.house.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Mignon L. Clyburn".

Mignon L. Clyburn  
Commissioner  
Federal Communications Commission

Attachment

Attachment — Additional Questions for the RecordThe Honorable Renee Ellmers

1. The Department of Justice recently stated that they will not take a position on the municipal broadband issue, even as they are defending the Commission on other controversial issues. What do you think this says about the Commission's attempt to pre-empt state laws?

Thank you for your question.

I am very passionate about ensuring that all areas of our nation have the ability to take full advantage of the promises that broadband connectivity brings. While the private sector has done a tremendous job investing in broadband networks throughout the country, there are pockets in this nation where broadband providers have not reached, leaving millions of our citizens stuck in the digital darkness. Broadband can only be "the greatest equalizer of our time" if it is both available and affordable to all Americans, regardless of where they live. Unfortunately, in too many of our communities, accessibility remains a primary barrier to connectivity and enhanced opportunities.

As a former state regulator, having spent 11 years on the South Carolina Public Service Commission, I am always hesitant when it comes to preempting states and do not take this decision lightly. While I prefer collaboration with our state partners, I believe it is appropriate for the Federal Communications Commission (FCC) to act when, as is the case here, the national policy goals of universal broadband for all Americans is being thwarted by state laws. In sum, the issue for me is one of local choice.

Local communities should not be barred from responding to the needs of their citizens particularly when those neighborhoods are trapped in a technology badland. For years, some area officials literally begged the private sector to serve their municipalities, but were repeatedly told no. Consequently, opportunities are being foreclosed, citizens are without broadband, and area leaders are left with few meaningful ways to address growing infrastructure needs. Those duly elected local officials are the ones, I believe, best suited to ultimately decide how to respond to their constituents' needs.

The FCC's Order does not require muni-broadband deployment nor does it take a position on whether muni-broadband is a good idea or not. The agency's decision simply removes a barrier to allow local communities to make this choice.

You noted that the FCC's decision was challenged and is now pending in court. As to the Department of Justice, I was not part of those discussions and cannot speak to why they did not join the FCC's brief. That question would be best directed to our General Counsel. Regardless of how the court rules, I remain proud to stand up for local choice and the ability of communities and their duly elected local officials to respond to the needs of their citizens.

**2. Where in Section 706 of the Telecommunications Act does it say the FCC is allowed to preempt state laws?**

Section 706 of the Act directs the FCC to remove barriers to infrastructure investment and promote competition in the telecommunications market. The issue before the FCC in the petitions was a narrow one: were the Tennessee and North Carolina laws acting as barriers to broadband infrastructure investment and competition? The FCC concluded the answer was yes and relied upon our authority under section 706 of the Act to preempt such barriers.

While reasonable minds can differ, and the court will provide guidance on the scope of the FCC's authority here, what is clear is that since the FCC acted, two communities are no longer restricted from responding to the needs of their citizens, and broadband is being deployed. The laws that were preempted were barriers to deployment, which is the question that was posed to the FCC.

I recently had the opportunity to visit Chattanooga, TN and saw first-hand the benefits of the FCC's action. Consumers previously in digital darkness now have the means to realize incredible opportunities. I am proud of my vote.

**3. Does the Commission plan to preempt any other state laws or will it forbear on further preemption?**

The FCC's decision is limited to the laws of two states (NC and TN) and is narrowly tailored to answer the specific question presented in response to petitions filed by two entities. This decision does not affect the laws in any other state. Ultimately, the decision of what items to bring to the full Commission for a vote is up to the Chairman but I am not aware of anything pending, such as another petition, which would require additional FCC action in the near term.

**Attachment — Additional Questions for the Record**

**The Honorable Anna G. Eshoo**

1. **In the context of our efforts to reform the Lifeline program, how do we ensure low-income Americans have access to the same broadband service offerings, including both fixed and mobile that everyone else enjoys?**

Thank you for your question and for your leadership to help ensure universal access to broadband for all Americans, including low-income consumers, as Congress directed in the Communications Act.

The FCC has fallen short when it comes to the Congressional mandate in section 254 of the Communications Act, to ensure that low-income consumers have options reasonably comparable to what those of us in urban areas enjoy. I strongly believe it is time to right this wrong and the FCC must do whatever it can to foster accessible and affordable broadband for everyone.

I believe the best way for the FCC to facilitate this is through Lifeline, but the current needs-based, Universal Service program is outmoded and uses the same basic framework from the year it was created by the FCC, more than 30 years ago. Much has changed since 1985 and to better serve consumers, we need to reform the program and create more competitive options and choice comparable to what all consumers enjoy. It is clear to me that the current program is not functionally optimal when cable companies, which serve the vast majority of the country with home broadband, do not participate in Lifeline and most of the nationwide wireless providers have left the program. The result is fewer choices and reduced competition.

I envision a new process, a totally revamped construct where providers do not determine whether a consumer is eligible for Lifeline, consumers are treated with dignity and respect, and customers have multiple options. All broadband providers, whether fixed or mobile, should be encouraged to participate but in order to make certain that service is truly comparable, I continue to believe that minimum standards are appropriate. If we are successful in properly recalibrating the Lifeline program, these reforms will ensure that low-income consumers receive the same broadband service offerings (both fixed and mobile) that everyone else enjoys.

More choice should not only bring better service and more options, ultimately, it would mean that each dollar of universal service support will go further: a win-win for our nation.

Attachment — Additional Questions for the Record

The Honorable John Yarmuth

A lot of work is underway to respond to the wireless broadband demands of our economy. At the top of this list is the upcoming incentive auction. We know there is likely a shortage of qualified tower crews for transitioning broadcasters to their new channel assignments after the auction concludes.

We also know that our service members gain valuable job and leadership skills in our military, yet many have difficulty transitioning back into the workplace.

1. What are you doing on this issue?

Thank you for your questions.

Two of the FCC's top objectives in the wireless industry are facilitating the deployment of the infrastructure necessary to support dynamic growth in wireless communications, and ensuring that these deployment efforts recognize the unique skills of military service members who are transitioning into the private sector.

I have been, and I remain, committed to advancing both of these objectives, and also emphasizing the critical need to ensure worker safety with tower crews. The Commission has taken action in meaningful ways in this area, most notably by partnering with the Department of Labor on the issue of tower work.

In October 2014, the FCC and the Department of Labor hosted a workshop, which included presentations devoted to tower climber safety and a national signing ceremony for the industry-supported Telecommunications Industry Registered Apprenticeship Program (TIRAP). Another workshop – focused on tower climber safety, the TIRAP apprenticeship program, and telecommunications workforce development – will be held at the FCC on February 11, 2016. In addition to hosting these events, the FCC's Wireless Telecommunications Bureau spoke at the Wireless Industry Workforce Development Summit at the White House, in July 2015, where the discussion focused on increasing opportunities for veterans and fostering workforce development to support ongoing expansion in wireless communications.

At this time, I am not aware of a similar initiative to employ veterans in the effort to transition broadcast TV stations if they are reassigned new frequencies as a result of the incentive auction. But the increased demand for broadcast tower crews post-auction presents a great opportunity to hire veterans, including those who obtained relevant skills while serving our country. We should encourage broadcasters, tower companies, and tower crews to pursue this and specifically, we can reach out to the various parties involved in broadcast tower work and organizations that identify employment opportunities for veterans, to create connections and encourage a dialogue.

2. **Would you be committed to working with both broadcasters and veterans groups to see if there is an opportunity here for our nation's veterans as we head through this complicated process?**

Absolutely. I remain committed to these efforts.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
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2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

January 14, 2016

The Honorable Jessica Rosenworcel  
Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Dear Commissioner Rosenworcel:

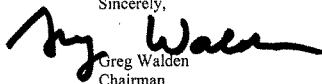
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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden  
Chairman

Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment



**Attachment — Additional Questions for the Record**

**The Honorable Renee Ellmers**

1. The Department of Justice recently stated that they will not take a position on the municipal broadband issue, even as they are defending the Commission on other controversial issues. What do you think this says about the Commissions attempt to pre-empt state laws?
2. Where in Section 706 of the Telecommunications Act does it say the FCC is allowed to preempt state laws?
3. Does the commission plan to pre-empt any other state laws or will it forbear on further preemption?

**The Honorable John Yarmuth**

A lot of work is underway to respond to the wireless broadband demands of our economy. At the top of this list is the upcoming incentive auction. We know there is a likely shortage of qualified tower crews for transitioning broadcasters to their new channel assignments after the auction concludes.

We also know that our service members gain valuable job and leadership skills in our military, yet many have difficulty transitioning back into the workplace.

1. What are you all doing on this issue?
2. Would you be committed to working with both broadcasters and veterans groups to see if there is an opportunity here for our nation's veterans as we head through this complicated process?

Commissioner Jessica Rosenworcel  
Federal Communications Commission  
Responses to Questions for the Record  
House Energy and Commerce Subcommittee on Communications and Technology  
“Oversight of the Federal Communications Commission”  
November 17, 2015

**The Honorable Renee Ellmers**

- 1. The Department of Justice recently stated that they will not take a position on the municipal broadband issue, even as they are defending the Commission on other controversial issues. What do you think this says about the Commission’s attempt to preempt state laws?**

I have had no conversations with the Department of Justice regarding the appeal of the Commission’s February 2015 decision regarding municipal broadband. As a result, I cannot speculate why the Department of Justice chose to not take a position in the ongoing litigation before the Sixth Court of Appeals.

- 2. Where in Section 706 of the Telecommunications Act does it say the FCC is allowed to preempt state laws?**

As the Supreme Court has made clear, “[a] pre-emptive regulation’s force does not depend on express congressional authorization to displace state law.” *City of New York v. FCC*, 486 U.S. 57, 64 (1988) (quoting *Fidelity Fed. Savings & Loan Ass’n v. De la Cuesta*, 458 U.S. 141, 154 (1982)). Consistent with this approach, the Commission’s February 2015 decision regarding municipal broadband acknowledges that a federal agency acting within the scope of its authority may preempt state law even absent an express authorization of this power. As a result, the Commission found that the direction in Section 706 to, among other things, adopt “measures to promote competition in the local telecommunications market” and to “remove barriers to infrastructure investment” provided the authority to address a conflict between federal and state policies, resulting in the limited preemption of state law at issue in the Commission’s decision.

- 3. Does the Commission plan to pre-empt any other state laws or will it forbear from further preemption?**

The Commission’s February 2015 decision regarding municipal broadband was adopted in response to petitions before the agency from the Electric Power Board of Chattanooga, Tennessee and the City of Wilson, North Carolina. I am not familiar with other petitions before the Commission seeking similar relief, nor am I aware of other plans to exercise the agency’s authority in this area.

**The Honorable John Yarmuth**

**A lot of work is underway to respond to the wireless broadband demands of our economy. At the top of this list is the upcoming incentive auction. We know there is a likely shortage of qualified tower crews for transitioning broadcasters to their new channel assignments after the auction concludes.**

**We also know that our service members gain valuable job and leadership skills in our military, yet many have difficulty transitioning back into the workplace.**

**1. What are you all doing on this issue?**

This is a terrific idea. We know that service members gain a range of valuable technical and leadership skills in the military. We also know that the path out of the military back into the civilian workforce can be difficult. Finally, we know that jobs in the wireless industry are growing—and that with the upcoming changes in the 600 MHz band this growth is bound to continue. All of this means, creating job opportunities for our veterans in the wireless industry is a smart thing to do.

With an eye to the job growth in this sector, in October 2014, the Commission joined with the Department of Labor to launch the Telecommunications Industry Registered Apprenticeship Program (TIRAP). TIRAP is a public-private initiative to develop a Department of Labor apprenticeship program to address workforce needs like the one you describe and also help provide existing workers with the skills necessary for advancement. In December 2015, the Commission announced a joint workshop with the Department of Labor that will include discussion of the TIRAP program and efforts to enhance opportunities in the telecommunications workforce. This workshop will be held on February 11, 2016. My office has requested that the US Department of Veterans Affairs be included in this discussion.

**2. Would you be committed to working with broadcasters and veterans groups to see if there is an opportunity here for our nation's veterans as we head through this complicated process?**

Yes. I fully support increasing employment opportunities for veterans, especially in science, technology, engineering, and math—which are the fastest growing fields in the new economy.

Last summer I was a guest at the ribbon-cutting ceremony launching Bunker Labs in Philadelphia. Bunker Labs, based in Chicago, is a national technology incubator for veteran-owned start-ups. It's one of countless organizations working to find pathways for veterans in the broader economy. We need to do more to support organizations like this and identify workforce opportunities—like the changes coming to the 600 MHz band—that may be well-suited for veterans using the skills they develop while they serve.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

January 14, 2016

The Honorable Ajit Pai  
Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Dear Commissioner Pai:

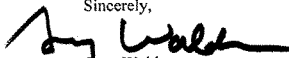
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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden  
Chairman

Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

**The Honorable Brett Guthrie**

1. **Do you think more needs to be done to identify spectrum that could be made available for commercial use, and if so, what steps should the Commission be taking that it may not be taking already?**

Yes, I do think that more needs to be done to identify spectrum that could be made available for commercial use.

One step the Federal Communications Commission should be taking is seeking comment on making up to 12,500 MHz of spectrum in the 24 GHz band, 32 GHz band, 42 GHz band, and the 70 and 80 GHz bands available for commercial mobile use. The Commission did not propose moving forward with those bands in a recent Notice of Proposed Rulemaking (FCC 15-137) even though I urged it to do so. I hope that we include those bands in a Further Notice of Proposed Rulemaking this year.

Another step the Commission should be taking is completing our rulemaking on the 5 GHz band. There is up to 195 MHz of spectrum in the 5 GHz band that the Commission could open up for unlicensed use, including commercial mobile use.

The Commission also has about 200 AWS-3 licenses in our spectrum inventory. While the FCC auctioned off these licenses as part of our AWS-3 auction (Auction 97), they were returned to the Commission by two small companies after the FCC determined that those companies were controlled by a Fortune 500 corporation and thus ineligible for any discounts under our small business program. I believe the FCC should reacquire those licenses in 2016, as soon as possible after the conclusion of the incentive auction.

**The Honorable Renee Ellmers**

1. **The Department of Justice recently stated that they will not take a position on the municipal broadband issue, even as they are defending the Commission on other controversial issues. What do you think this says about the Commission's attempt to pre-empt state laws?**

The decision of the Department of Justice not to sign an agency's brief is exceptionally rare. It indicates that the Department has serious doubts about the legal foundation for the FCC's decision to preempt the Tennessee and North Carolina laws in question.

2. **Where in Section 706 of the Telecommunications Act does it say the FCC is allowed to preempt state laws?**

Section 706 of the Telecommunications Act makes no reference to preemption whatsoever. Under clearly established Supreme Court law (*Nixon v. Missouri Municipal League*), that means the FCC cannot use that section to preempt the "traditional state authority to order its government."

What is worse, that section's legislative history demonstrates that Congress did not intend to give the Commission the authority to preempt state laws. When the Senate in 1995 passed the bill that became the Telecommunications Act of 1996, that legislation contained a precursor to section 706(b). That precursor authorized the FCC, if it determined that broadband was not being deployed in a reasonable and timely fashion, to "preempt State commissions that fail to act to ensure [the] availability [of advanced telecommunications capability to all Americans]." But Congress ultimately decided not to grant this preemptory power to the Commission and *eliminated that language from the final version of the bill*.

**3. Does the commission plan to pre-empt any other state laws or will it forbear on further preemption.**

As a minority member of the Commission, I do not set the agency's agenda or decide which issues that the Commission will vote on, and I have not been presented with any proposal or order that would preempt any other state laws—at this point.

**The Honorable John Yarmuth**

**A lot of work is underway to respond to the wireless broadband demands of our economy. At the top of this list is the upcoming incentive auction. We know there is a likely shortage of qualified tower crews for transitioning broadcasters to their new channel assignments after the auction concludes.**

**We also know that our service members gain valuable job and leadership skills in our military, yet many have difficulty transitioning back into the workplace.**

**1. What are you all doing on this issue?**

As a minority member of the Commission, I do not set the agency's agenda or decide which issues that the Commission will vote on, and I have not been presented with any proposal or order that involves the transition of service members into the workplace.

I am aware, however, of steps that the industry is taking that relate to this issue. For instance, the Personal Communications Industry Association (PCIA), which is a trade association that represents the wireless telecommunications infrastructure industry, is a lead association supporter of Warriors4Wireless. Warriors4Wireless is a non-profit organization that trains service men and women in the skills necessary to transition to a career in the telecommunications industry (website: <http://warriors4wireless.org/about/>).

**2. Would you be committed to working with both broadcasters and veterans groups to see if there is an opportunity here for our nation's veterans as we head through this complicated process?**

Yes. I have an open door policy, and I would be happy to meet with both broadcasters and veterans groups.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
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COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

January 14, 2016

The Honorable Michael O'Rielly  
Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Dear Commissioner O'Rielly:

Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, November 17, 2015, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,  
  
Greg Walden  
Chairman  
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment



Mike O'Rielly  
Commissioner

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 12, 2016

Greg Watson  
Legislative Clerk  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Re: Questions for the Record  
November 17, 2015 Hearing before the House Energy and Commerce  
Subcommittee on Communications and Technology  
"Oversight Hearing of the Federal Communications Commission"

Dear Mr. Watson:

Please find enclosed my responses to the questions for the record in connection with my testimony at the November 17, 2015 hearing entitled "Oversight of the Federal Communications Commission."

A copy of this letter and responses are also being sent to you today via email at [Greg.Watson@mail.house.gov](mailto:Greg.Watson@mail.house.gov).

Thank you and please do not hesitate to contact me if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Rielly".

Michael O'Rielly  
Commissioner

Enclosure  
cc w/enc: [Greg.Watson@mail.house.gov](mailto:Greg.Watson@mail.house.gov)



**Questions for Record for Hearing on November 17, 2015 before House Energy and Commerce  
Subcommittee on Communications and Technology**

**The Honorable Bob Latta**

Earlier this year, I, along with several other Members of Congress, reintroduced the Wi-Fi Innovation Act, which would examine ways to maximize the use of spectrum in the upper 5 gigahertz band without creating harmful interference with incumbent users. Many believe the 5.9 GHz band is the most promising potential Wi-Fi band on the table so we need to accelerate decision-making.

1. Do you know of any other band that is more promising than 5.9 for Wi-Fi or is this our best bet?

Based on information that I have received from industry and experts in this field, I do not believe that -- for the foreseeable future -- another spectrum band has the promise for improving consumers' unlicensed spectrum experience, for such things as Wi-Fi, as does the 5.9 GHz band. Its adjacency to the lower and middle 5 GHz band, in which Wi-Fi has been incredibly successful, makes it highly likely that allowing unlicensed use in the upper portion, compared to other bands, will generate the greatest savings in terms of cost efficiencies and time to market while dramatically expanding overall technological possibilities.

2. With respect to testing planned to facilitate sharing in the UNII-4 band and involving both the FCC and the Department of Transportation, do you agree that the Commission's expertise in interference analysis and its obligations under the Communications Act require that it take the lead in designating and analyzing interference testing and making ultimate decisions as to spectrum sharing for this band?

Consistent with the recent letters sent to the Commission from leaders in the U.S. Senate and industry representatives, I agree that the Commission must retain its responsibility to oversee any testing process and make appropriate decisions regarding whether sharing would or would not cause harmful interference in the upper 5 GHz band. No other federal government agency or department has comparable experience or expertise to conduct these functions. Further, such determinations are consistent with the statutory obligations placed with the Commission.

**The Honorable Brett Guthrie**

1. Regarding reforms to the USF program for rural carriers, I understand the proposed rural model was adapted from a price-cap model that was developed for large carriers that serve very large areas. How accurate do you think the model will be in predicting sufficient support for small carriers that serve small, rural areas?

In my opinion, the model for Rate of Return carriers (better known as A-CAM) represents an honest effort to account, at the time of an A-CAM version's release, for different factors and costs in the provision of broadband throughout the United States, including in rural areas. However, a model just reflects the inputs used and decisions made by the Commission staff during its development and, by its nature, will not fully capture all factors and costs for a particular area. As such, the Commission has always approached any application of the model for Rate of Return carriers' high cost support to be completely voluntary -- meaning no carrier is required to elect to receive support based on the model's outcomes. It is worth noting that staff

did receive and incorporate feedback and data from the small, rural carriers during this process, which was very helpful in further refining the model. For example, staff updated the model with plant mix data provided by carriers for over 500 – or nearly half of the total – study areas.

2. As an example of one issue with the model that was raised when I was back in Kentucky recently, some carriers are concerned that certain kinds of networks may get more support than others. Is it true that the model normally produces more support for aerial over buried networks?

The calculation of the costs of aerial versus buried can be complex. In general, an aerial network can be less costly. However, this assumes the aerial network can utilize existing poles, and that the plant is shared. In a number of instances, this cannot be done and thus the cost of new towers and poles can be quite expensive. In addition, pole attachment costs, which the Commission has some authority to review, can be an added cost not applicable to buried networks.

In the case of A-CAM, it is not true that aerial builds generally are treated as more costly than buried networks, ultimately resulting in more support. While the total construction cost for buried can be lower than the total construction cost for aerial in rural areas, depending on the soil type, the model assumes that the carrier does not bear the full cost of construction for outside plant structure. Specifically, the model assumes more sharing of costs for aerial and less for buried – an assumption that has not proven controversial in this proceeding. The result is that factored capital expenses for aerial plant are lower, regardless of the soil type.

3. I understand the difficulty of developing a “perfect model” to match the diversity of all the rural companies across the country, but do you believe the Commission will consider taking more time to iron out the model before moving forward?

Over the many months since the first version of A-CAM was released, in December 2014, the Commission has made a number of changes and improvements based on input and review by interested parties. For example, the Commission updated study area boundaries, central office locations, and plant mix data in response to robust carrier engagement. In addition, to reflect the fact that rate-of-return carriers may have higher middle mile costs, the model was revised to add two connections from each regional access tandem ring to an Internet access point to account for the cost of connecting to the public Internet. Moreover, the model was revised to create a new size category for central offices serving fewer than 250 locations. In addition, as changes were made and new versions were released, staff provided illustrative results so that interested parties could better understand and evaluate how different assumptions impact the potential support for a particular study area. As such, I believe that A-CAM is sufficiently acceptable to be used, as a completely voluntary option, in the Commission’s reform to the rate of return portion of the high cost support program.

#### The Honorable Renee Ellmers

1. The Department of Justice recently stated that they will not take a position on the municipal broadband issue, even as they are defending the Commission on other controversial issues. What do you think this says about the Commission’s attempt to preempt state laws?

I do not have any great insight into or views about the workings of the Department of Justice on this matter. However, based on my past experience, the decision by DOJ to decline participation does seem rather unusual, raising questions regarding the soundness and efficacy of the Commission's decisions in the proceeding.

2. Where in Section 706 of the Telecommunications Act of 1996 does it say the FCC is allowed to preempt state laws?

It is my belief, based on my experience in the process of crafting Section 706, that the provision is being misinterpreted and therefore abused. More specifically, I have outlined publicly why I disagree with the notion that Section 706 is anything more than an analysis and report coupled with hortatory language. Accordingly, I do not support the viewpoint that the provision provides authority to preempt any state law.

3. Does the Commission plan to preempt other state laws or will it forbear on further preemption?

As a minority Commissioner, I do not have much say into the Commission's agenda so this question may be best posed of Chairman Wheeler.

#### The Honorable John Yarmuth

A lot of work is underway to respond to the wireless broadband demands of our economy. At the top of this list is the upcoming incentive auction. We know there is a likely shortage of qualified tower crews for transitioning broadcasters to their new channel assignments after the auction concludes.

We also know that our service members gain valuable job and leadership skills in our military, yet many have difficulty transitioning back into the workplace.

1. What are you all doing on this issue?

I have personally sought out information regarding the availability of tower crews to perform the type of work expected to successfully repack broadcast stations at the conclusion of the incentive auction. Early on in the Commission's implementation of the Spectrum Act, I recognized the need for an accurate assessment of how many tower crews currently existed and how fast additional crews could be brought online. Since then, I have raised the issue in meetings with relevant industry participants, speeches, and with Commission staff. Suffice it to say, the responses have not provided me with the hard data needed to make a determination on the status of tower crews that can work on the broadcaster repacking process and subsequent tower relocation efforts. I am worried that the number of current tower crews to perform the expected workload is insufficient.

2. Would you be committed to working with both broadcasters and veterans groups to see if there is any opportunity here for our nation's veterans as we head through this complicated process?

Certainly. While we don't have any direct statutory authority to deliver a particular outcome, I would be happy to join my colleagues to seek ways that America's heroes – our current and former military personnel – may be able to be trained to participate and work in the tower construction industry. I would hope that any such effort would not only include broadcasters

and veterans groups, but also the wireless industry and tower companies. In fact, PCIA has partnered with Warriors 4 Wireless to assist veterans looking for positions in the wireless industry.<sup>1</sup> Initiating this effort at the Congressional level via Committee meetings may be the best way to proceed.

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<sup>1</sup> See: <http://www.pcia.com/pcia-press-releases/620-pcia-proudly-supports-launch-of-warriors-4-wireless-to-help-returning-veterans-find-work-in-wireless-industry>

